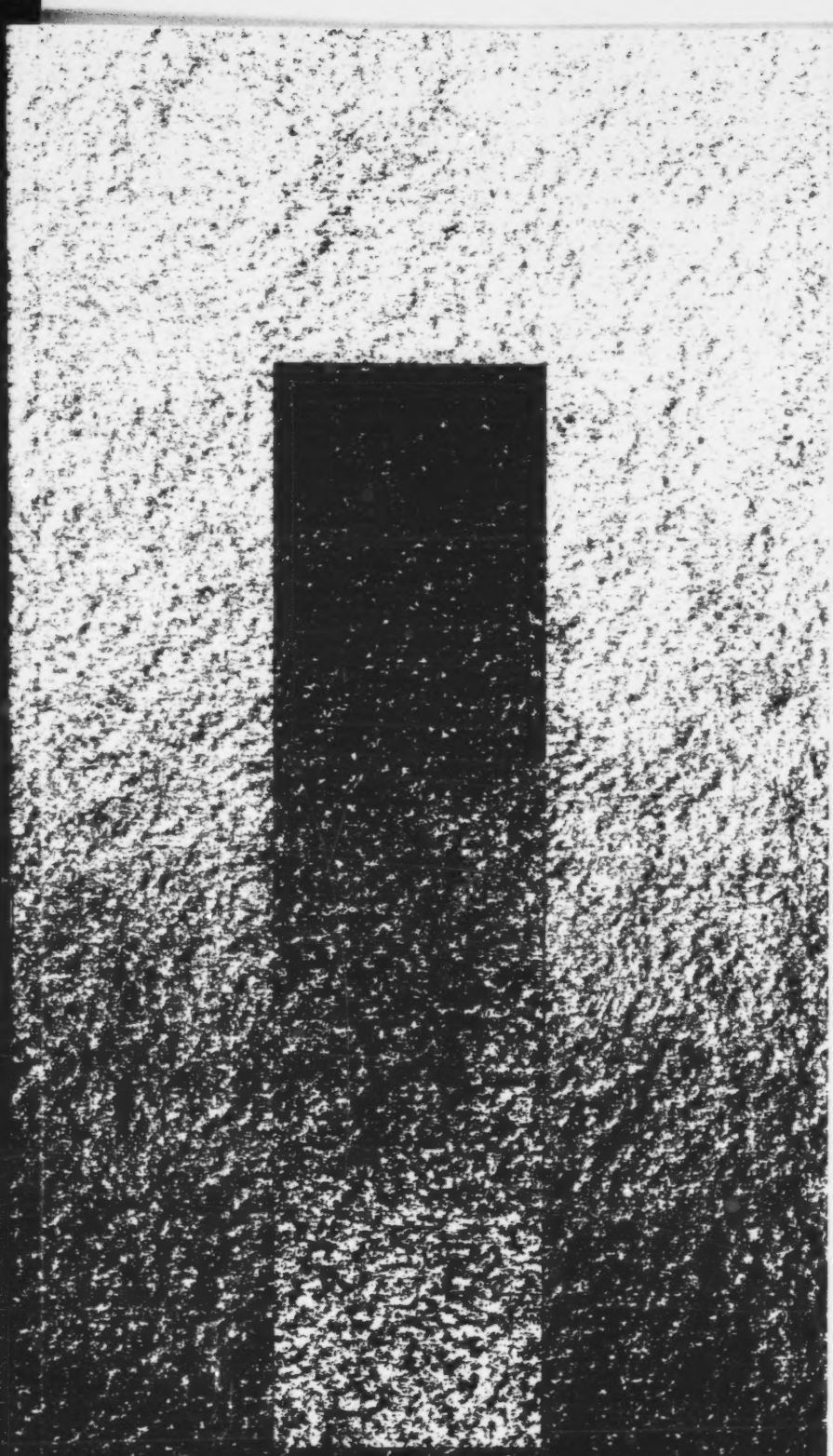

An Action Plan for Environmental Law Enforcement in Alberta

prepared by

The Review Panel on Environmental Law Enforcement

Honourable Ken Kowalski
Minister
Department of Environment
132 Legislature Building
Edmonton, Alberta
T5K 2B6

Dear Mr. Kowalski:

Re: Environmental Law Enforcement in Alberta

At your request, we have undertaken a review of environmental law enforcement in Alberta. In carrying out this review we have had an opportunity to obtain the views and suggestions on this subject from a broad range of experts and interested parties. The recommendations contained in this Action Plan for Environmental Law Enforcement in Alberta reflect the views of the Review Panel. It is the Review Panel's expectation that an enhanced environmental regulatory framework will emerge in Alberta through the implementation of the Action Plan.

Jillian Flett

Denny Thomas

Al Hyndman

Donna Tingley

Neil McCrank

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Ken Smith

Table of Contents

Acknowledgements ____ 1

Introduction ____ 5

Standard Setting

PRESENT SITUATION ____ 9

PROPOSED ACTION ____ 9

1. Develop a Policy to Set Environmental Standards ____ 9
2. Develop New Standards ____ 9
3. Improve Public Education and Awareness ____ 9

Ambient Air Quality Standards

PRESENT SITUATION ____ 13

PROPOSED ACTION ____ 13

1. Replace Ambient Regulations ____ 13
2. Publish Objectives and Performance Results ____ 14
3. Continue to Require Ambient Monitoring ____ 14
4. Consider the Time Period for Standards ____ 14

Water Quality Standards

PRESENT SITUATION ____ 17

PROPOSED ACTION ____ 17

1. Establish a Coordinated Policy for Water Quality and Quantity ____ 17
2. Establish Effluent Standards for Pollution Sources for Each Watershed ____ 18
3. Improve Interdepartmental Coordination ____ 18

Licensing Procedures

PRESENT SITUATION ____ 21

PROPOSED ACTION ____ 21

1. Public Notice and Review of License Applications ____ 21
2. Legal Review of License Conditions ____ 21
3. Public Notice of License Conditions ____ 21
4. License Reviews ____ 22
5. License Renewals ____ 22
6. License Appeals ____ 22

License Requirements

PRESENT SITUATION — 25
PROPOSED ACTION — 25
1. Set Maximum Emission Limits — 25
2. Set Performance Emission Limits — 25
3. Declare Planned Start-ups and Shut-downs — 25
4. Conduct Emergency Risk Assessment — 26
5. Issue Interim Licenses — 26
6. Remove Waivers — 26

Monitoring Compliance

PRESENT SITUATION — 29
PROPOSED ACTION — 29
1. Review Monitoring Requirements — 29
2. Require Back-up Monitoring — 29
3. Monitor Ambient Concentrations — 29
4. Monitoring Units — 29

Administrative Responses to Non-Compliance

PRESENT SITUATION — 33
PROPOSED ACTION — 34
1. Develop a Formal Enforcement Policy — 34
2. Contents of the Enforcement Policy — 34
3. Develop an Enforcement Manual — 34
4. Restrict Use of Directives — 35
5. Enforcement Response for Unregulated Operations — 35
6. Enforcement Model for Violations of License Emission Limits — 35

Prosecution

PRESENT SITUATION — 43
PROPOSED ACTION — 43
1. Clearly Define Prosecutable Offenses — 43
2. Evidence — 44
3. Recommending Prosecution — 44
4. Authority to Lay Charges — 44
5. Due Diligence — 45
6. Actively Use Tickets — 45
7. Expand the Number of Offenses Allowing Tickets — 45
8. Designate Enforcement Staff as Special Constables — 46
9. Increase Fines for Ticket Offenses — 46

Offenses and Penalties

PRESENT SITUATION — 49
PROPOSED ACTION — 49
1. Allow for Court Orders — 49
2. Review Structure For Fines — 49
3. Designate Each Day as a Separate Offense — 50
4. Orders Removing Financial Gains Achieved By Polluting — 50
5. Liability of the Crown and Crown Agencies — 50
6. Personal Liability of Individuals Involved in Corporate Offenses — 50

Environmental Enforcement Unit

PRESENT SITUATION — 53
PROPOSED ACTION — 53
1. Change the Mandate of the Pollution Control Division — 53
2. Composition of the Restructured Pollution Control Division — 54
3. Improve Intradepartmental Coordination — 54
4. Improve Investigative Skills — 55
5. Conduct Quality Assurance Program — 55
6. Improve Interdepartmental Liason — 55
7. Publish an Annual Report — 56
8. Conduct an Evaluation — 56

Conclusion — 61

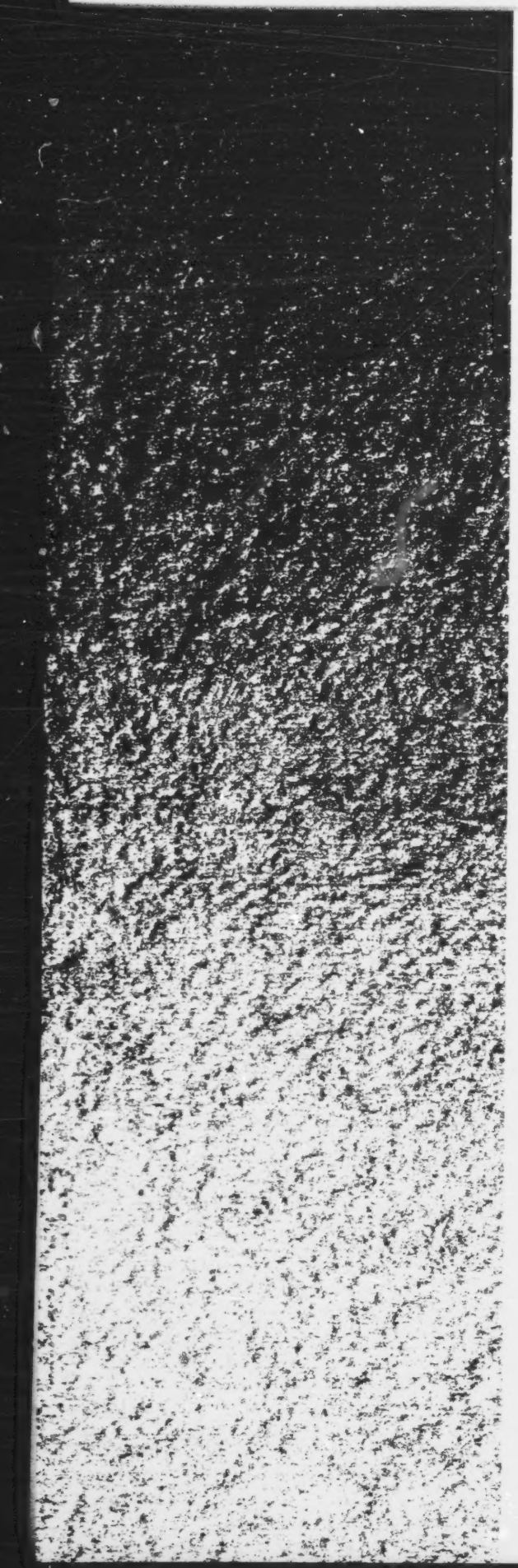
Appendices

I. Review Panel Members — 65
II. Submissions to the Review Panel — 69
III. Proposed Legislative Amendments to Strengthen Enforcement — 75

Acknowledgements

The Review Panel on Environmental Law Enforcement in Alberta would like to acknowledge all those individuals and organizations who made presentations to the Panel and who were involved in the Task Force. The time and effort they donated to assist the Panel in its review is most appreciated.

Introduction



Introduction

Since its inception in 1971, Alberta Environment has grown to a department employing approximately 1120 people and administering 19 statues relating to environmental matters. The Department's recently changed mandate for environmental protection can be best summarized by the March 1987 Speech from the Throne wherein the Alberta Government stated its determination "to achieve the protection, improvement and wise use of our environment now and in the future." The Government has stated that its record of commitment to "pollution abatement and waste management will continue to be second to none."

In recent years public attention has become more concerned with the enforcement of environmental legislation rather than simply focusing on its content.

In view of the variation in usage of the terms **enforcement** and **compliance**, it is important to clarify their meaning as used in this report. **Compliance** will be used to refer to **a state of conformity with the law. Enforcement** will refer to **responses to non-compliance** through a variety of administrative and prosecutorial tools.

Two distinct approaches to enforcement have developed. One approach holds that to be effective, environmental laws must be strictly upheld in the courts. The other, encourages negotiation as a more flexible cooperative approach to obtaining compliance with environmental laws. To date, Alberta Environment's enforcement system is based on a negotiation approach; the court system is used only as a last resort.

Proponents of strict enforcement claim that the cooperative approach provides little incentive for compliance and provides an unfair competitive advantage to those who fail to comply with the legislation. Supporters of the negotiation approach stress the high level of abatement achieved through an increased focus on technical as opposed to legal solutions.

Recent events, including a major air pollution incident in Calgary, have brought this debate to the forefront. It also gave rise to questions about enforcement methods for operators in start-up modes. In recognition of the need to strengthen the enforcement capability of the Department, the Honourable Ken Kowalski, Minister of Environment established the Review Panel on Environmental Law Enforcement in Alberta in July 1987. A list of Review Panel members is attached as Appendix I to this report.

The Review Panel's mandate was to:

- conduct a review of the use of waiver clauses in licenses and assess the control of start-up, shut-down practices of facilities containing such clauses,
- examine the existing approach to enforcement of environmental legislation in Alberta,
- review enforcement practices of other jurisdictions with a view to identifying strong points which could be employed in the Alberta system, and
- develop specific recommendations to strengthen the enforcement of Alberta's environmental statutes.

In fulfilling its mandate, the Review Panel invited experts on environmental law and enforcement from government, industry, the legal profession and the public to discuss environmental law enforcement issues. Presentations were received on the enforcement approaches followed by other Alberta government departments and environmental departments in other jurisdictions. An open invitation was also extended to all interested parties to make written or oral presentations to the Panel. During the course of six full day meetings, the Panel met with numerous groups and individuals, a list of which is included in Appendix II to this report.

The Panel also established a government/ industry Task Force to review the specific issues associated with enforcement practices during start-up, shut-down and emergency up-set

situations and to report back to the Review Panel.

A number of major themes came forth during these submissions, including:

- the limited opportunity for public involvement in the licensing and standard setting process,
- the *ad hoc* and discretionary nature of the existing enforcement system, and
- the importance of an open relationship between the regulators and those being regulated to allow solutions to be developed for environmental problems.

Although the Review Panel considered enforcement issues associated with the *Clean Air Act, Clean Water Act, Hazardous Chemicals Act, Water Resources Act and Land Surface Conservation and Reclamation Act*, the focus of this Action Plan is limited to issues associated with the enforcement of the *Clean Air Act* and *Clean Water Act*. However, many of the recommendations apply to the Department's general enforcement framework.

As a result of reviewing these submissions, the Review Panel has concluded that Alberta Environment's general approach to enforcement is sound, although its administrative practices are in need of significant improvement. Contrary to wide-spread public perception, the Government of Alberta has instituted mechanisms for industrial compliance with standards for environmental protection which are among the most strict in North America. However, the Review Panel recognizes the validity of expressed concerns relating to the lack of a clear direction for enforcement response, the large degree or discretion within the existing system, the lack of an opportunity for public involvement and the use of waiver clauses.

The licensing system is the heart of Alberta's pollution control system which focuses on a preventative, rather than reactive, response to pollution control. Alberta's licensing and permit system is the most comprehensive in Canada and provides a strong base for enforcement of environmental protection legislation.

Alberta Environment and its sister agencies deserve much credit for achieving this atmosphere of mutual cooperation with the private sector. It would be counter-productive to inadvertently dismantle the existing mechanisms for environmental compliance by implementing ill-considered measures for regulatory control.

Administrative mechanisms are the main tools to achieve abatement and compliance. Prosecution has only an indirect influence on abatement.

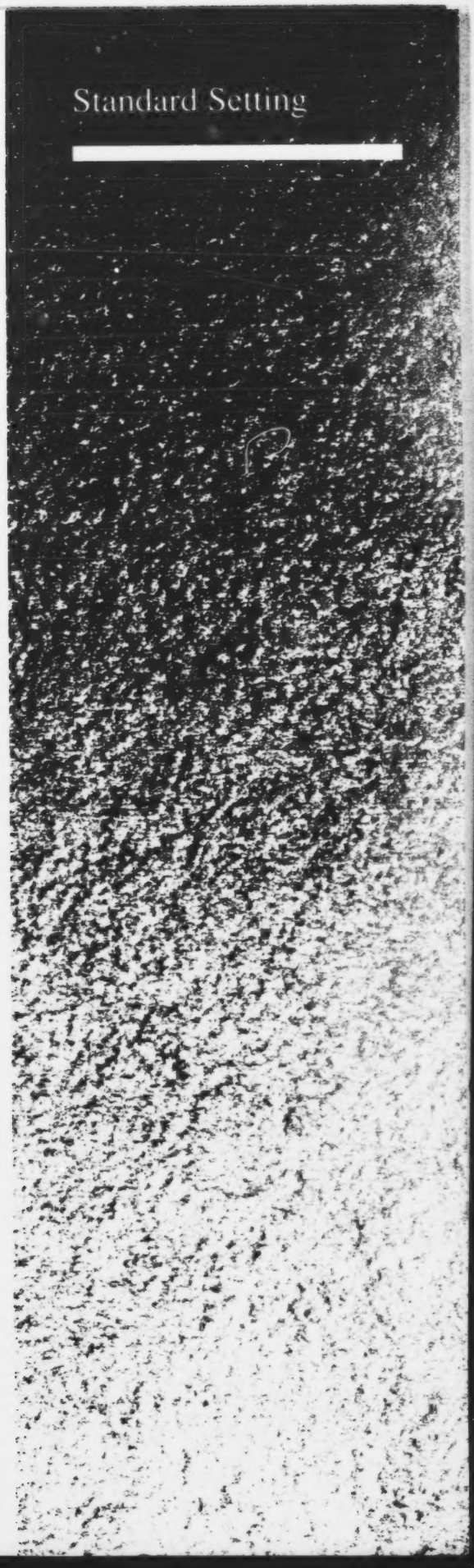
Nonetheless, efficient and quick prosecution of flagrant environmental offenders is necessary. This is all the more imperative in a system which has allowed for significant consultation in advance of licensing, as does Alberta's. Prosecution should be the option of first choice for clearly defined offenses and for failure to comply with control or stop orders.

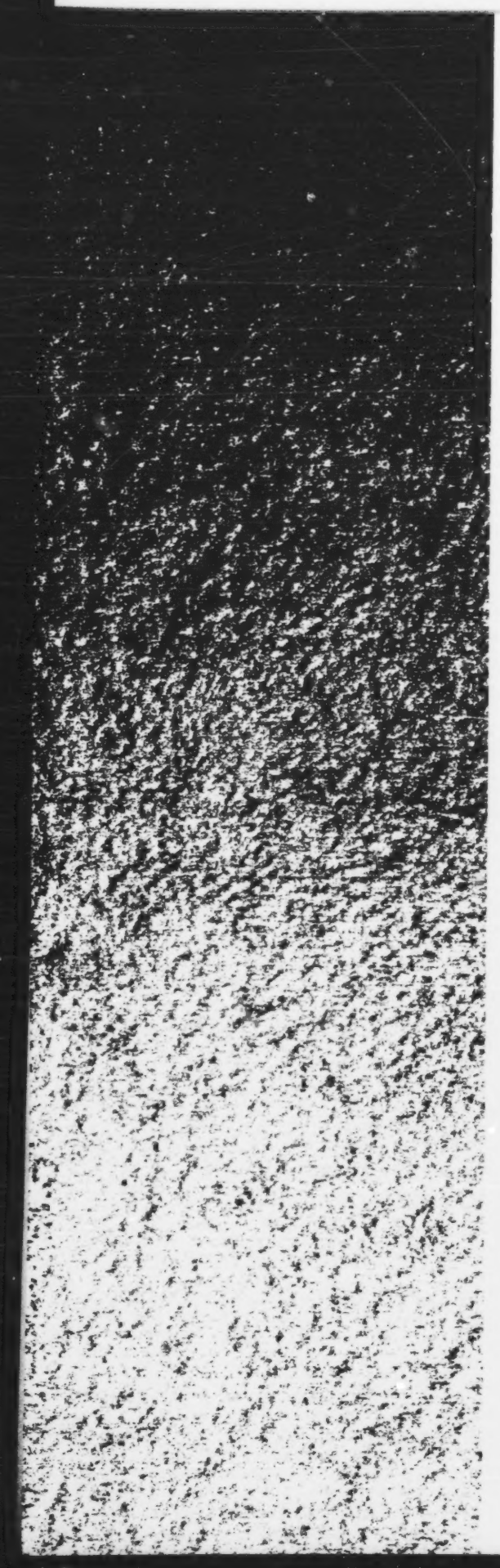
Success depends on the good faith of all parties involved. There must be a political and administrative will to apply the rules fairly, consistently and to the fullest extent of the law. Those regulated must use capable operators and adequate monitoring, must respond promptly to problems, and must implement contingency plans which protect the public interest.

The Review Panel has concluded that drastic changes to the existing framework are not needed, although specific corrective action and administrative reorganization will be required. A political and administrative commitment to both these goals and to public awareness of the enforcement system is imperative.

This document outlines the recommendations of the Review Panel. It is not intended to be a detailed report of all the issues the Review Panel considered but rather an action plan outlining recommended steps towards a more effective and efficient enforcement system while at the same time preserving the demonstrated strength of the preventative/abatement system now in place.

Standard Setting





Standard Setting

PRESENT SITUATION

Since emission control requirements and ambient standards are the basis for the whole environmental protection program, it is important that they be given serious consideration when reviewing approaches to enforcement. Alberta Environment has not developed a formal policy with respect to the establishment of emission control requirements and ambient standards. Standards are currently set without public involvement or review.

There is no systematic review of existing standards to ensure they are updated, nor is there a mechanism for systematically adding new standards which are needed to meet the Alberta situation. There is public concern in Alberta over the control of toxic chemicals, however, standards tend to reflect more traditional concerns.

Partly as a result of this situation, there have been suggestions that the standard setting system is not as strong as it could, or should be. There have also been suggestions that the nature and success of Alberta's environmental programs and the relative state of the environment are not well known to the public.

PROPOSED ACTION

1. Develop a Policy to Set Environmental Standards

The Review Panel recommends that Alberta Environment establish a policy to set, review and evaluate environmental standards. This policy should include provision for public involvement in both standard setting and review. It should also contain a mechanism to initiate reviews of standards as part of an ongoing review system.

2. Develop New Standards

The Review Panel recommends that consideration be given to establishing new standards for compounds which are of concern in Alberta, but for which no standards currently exist. A comprehensive list of priority substances should be developed immediately and reviewed on an annual basis.

3. Improve Public Education and Awareness

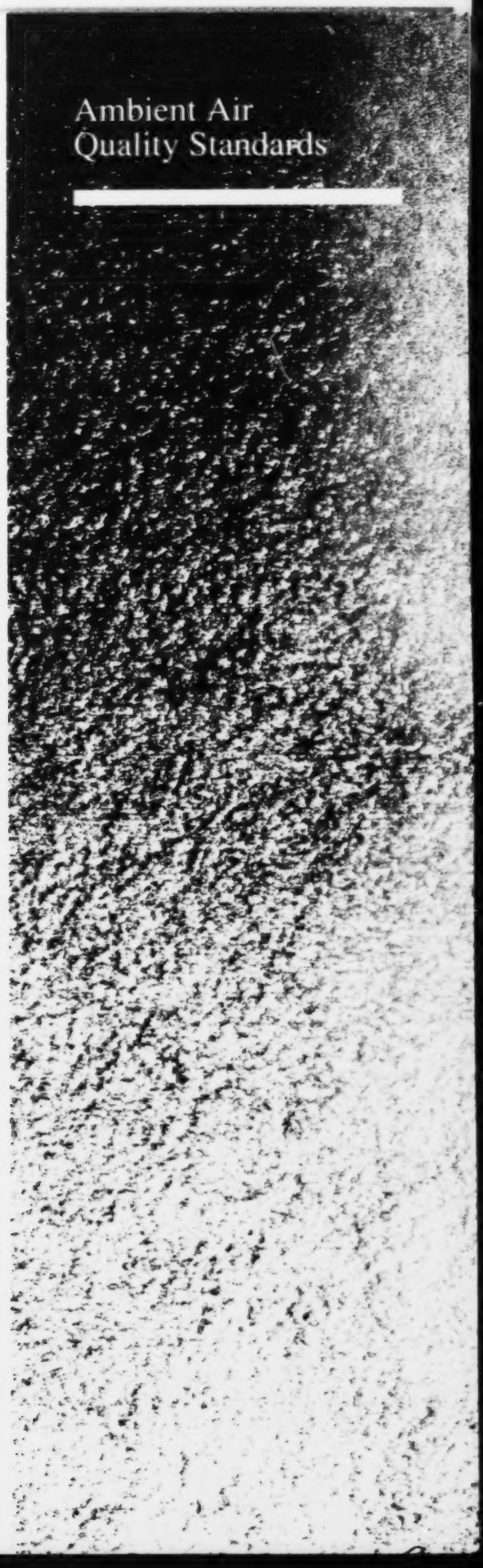
The public are entitled to a clearer view of the state of the environment in Alberta and an explanation of the effectiveness of the abatement programs for environmental protection operating in the Province.

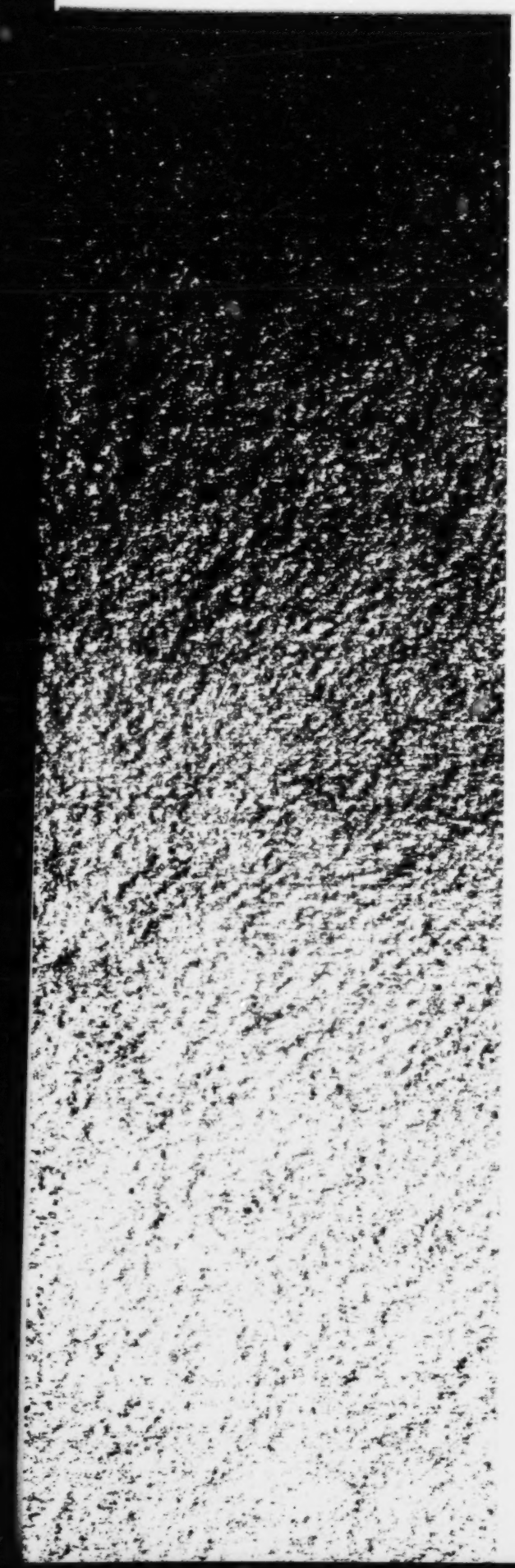
The Review Panel recommends that this might best be accomplished by issuing an annual or biannual *State of the Environment* report. It would not be a report about Alberta Environment, but rather would cover the following subject areas:

- an assessment of the measured air quality in major urban centres and other affected airsheds with comparative data from other urban centres in the world.
- an assessment of the water quality in Alberta's major rivers with comparisons of natural background levels and estimated contributions of contaminants from major source categories.

- an update on Alberta Environment's air and water quality standards and goals as outlined in the Departmental environmental policy statements.
- a summary of the findings of any major scientific studies completed by Alberta Environment or affiliated agencies in relation to air, surface water or ground water quality questions in Alberta.

The report would be distributed to the press, to libraries and to the public upon request, according to current practice with such documents.


Ambient Air
Quality Standards



Ambient Air Quality Standards

PRESENT SITUATION

Alberta Environment has established a set of ambient air quality standards that are reflected in regulations and are written into the requirements of plant operating licenses. The Review Panel was informed that these standards are among the most stringent in North America.

These regulations were developed to provide the Department with useful information for setting standards and to ensure that license limits were appropriate. They were not intended as a method to govern plant operation, nor to be directly enforced against specific operators.

Ambient air quality regulations in Alberta are not enforceable because it is exceedingly difficult to prove the source of the emission which may cause a high ambient reading. It may be that the contravention results from the cumulative effect of a number of sources of emissions. There is also no offense provision with respect to these regulations.

The standards can be expected to be exceeded on a statistical basis not only due to operating variation but also due to the cumulative impact of multiple sources of emissions and adverse weather conditions. In many cases where a standard is exceeded, an operating company reports these breaches as contraventions which may or may not reflect the performance of the reporting operation and may have little relevance for environmental protection or public health.

This situation leaves the public confused about why contraventions are not prosecuted even though these regulations/measurements were never intended for this type of enforcement. Members of the public may also think that the measured conditions will lead to serious environmental damage or health concerns when in fact these levels are often well below such thresholds.

PROPOSED ACTION

1.
Replace Ambient Regulations.

The Review Panel supports the original intent of the ambient air standards as a method to gain information to assist in setting license limits and rejects the concept of using ambient monitoring for enforcement purposes. Source monitoring should be the basis for gathering information for enforcement purposes.

Because the original intent of the ambient air quality standards was to measure air quality, and because of the problems associated with having unenforceable ambient standards specified in regulations, **it is recommended that the ambient air quality regulations contained in Part 1 of the *Clean Air (Maximum Levels) Regulations (A.R. 218/75)* be repealed. They should be replaced by a comprehensive set of objectives for a number of contaminants contained in a policy which would be developed with input from experts and interested parties and be open for public review.**

These objectives, including a reasonable provision for future growth of emission sources within a particular airshed, should be imposed by Alberta Environment when setting permit and license conditions.

License limits should be based on source emissions which take into account meteorological conditions. Ambient monitoring may be needed to predict source emissions and meteorological variability but once determined, source monitoring should be used to determine compliance and be

used as a basis for enforcement.

The practice of issuing permits and licenses with the objective of attaining a better performance than the "desirable" air quality objective as outlined in Environment Canada's three-tiered standards for air quality should continue. For example Alberta Environment should still issue permits with the goal of maintaining less than 0.17 p.p.m. sulphur dioxide, hourly average in the ambient air. In this regard, the Panel is aware of the need not to license pollution but to encourage the achievement of steadily improved standards.

Attention should be given to the development of an airshed management concept which specifically recognizes areas for enhanced protection (i.e. urban areas) and areas of large concentrations of industrial or other emission sources. This airshed bubble concept has been successfully applied elsewhere and should be considered as an adjunct to any new monitoring system implemented as a result of these recommendations.

2. Publish Objectives and Performance Results

It is recommended that ambient air quality objectives be published by Alberta Environment and the performance against these objectives should be publicized. Environment Canada's three levels, including the "desired" level, should also be published to provide the public with a means of comparing and interpreting the data.

3. Continue to Require Ambient Monitoring

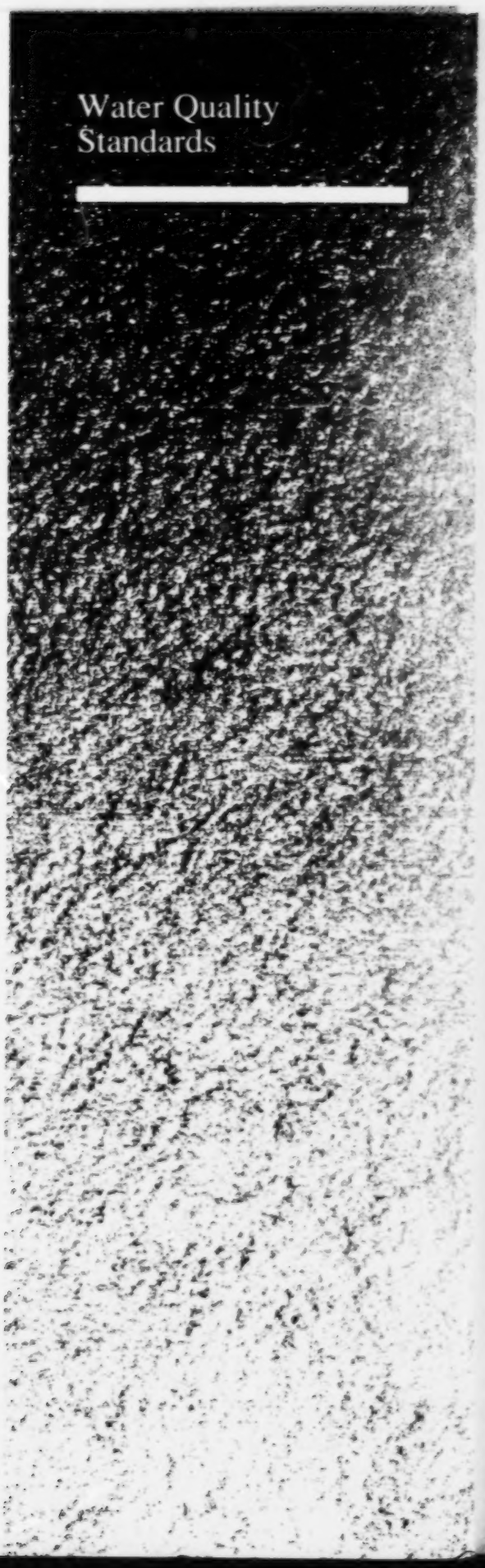
It is recommended that licences continue to require major sources of air contaminants to monitor ambient air quality. However, these monitoring results should be provided in the public interest and reported for information purposes only. Measured values in excess of the desired air quality objective would not be considered to be contraventions. They could lead to a specific review of the operator's source standards and the record of compliance for the facility. In addition, the effect of the changing meteorological conditions on ambient levels of pollutants will have to be factored into the determination of source emission standards and may require that future licences be amended to allow for such local, or regional, considerations.

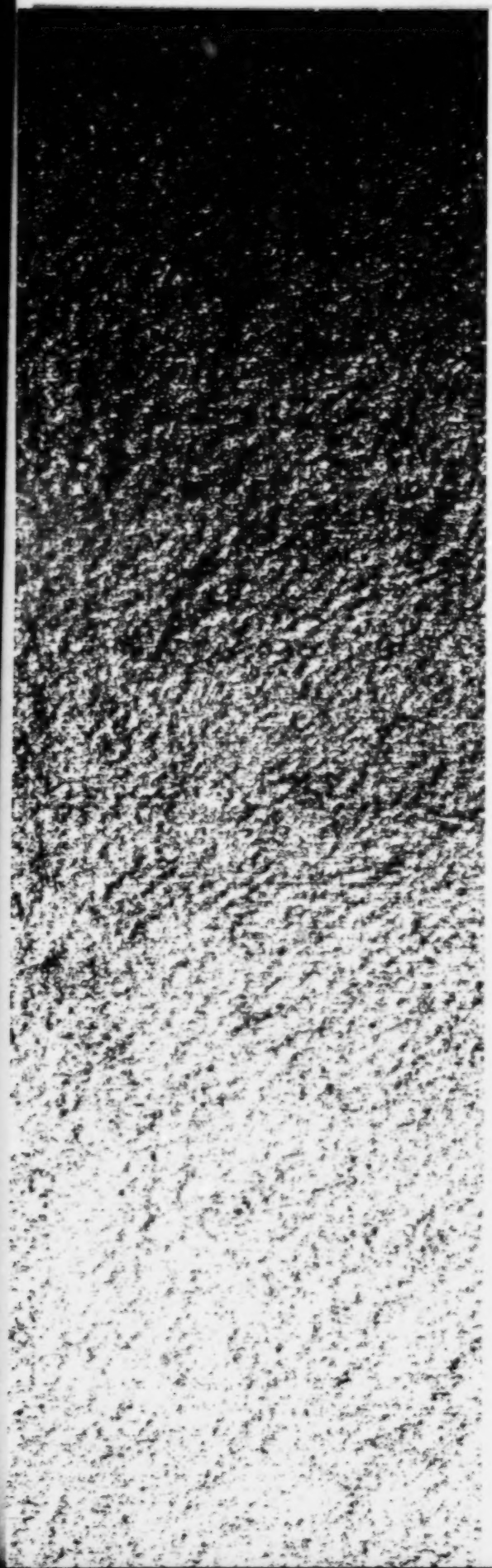
The Department should continue to encourage the practice employed in Strathcona County where a group of companies pool their monitoring resources and have the data provided on line to their members and Alberta Environment. The data should be used to measure the effectiveness of licenses, to measure regional performance and to set future permit and license conditions.

4. Consider the Time Period for Standards

It is recommended that time periods for source emission compliance be compatible with the objective to be attained. Where short term exposure is the concern, hourly readings may be appropriate. Where longer term cumulative effects are the concern, longer time periods (from several months to a year) provide a better control mechanism.

Water Quality Standards





Water Quality Standards

PRESENT SITUATION

Some of the concerns mentioned in relation to air quality standards apply to the discharge of liquid effluents into receiving water bodies.

At present, the control of water emissions is focused at the source through license limits. There are no ambient water quality regulations but surface water quality objectives have been developed. These objectives apply to the entire Province, as opposed to being articulated on a basin or watershed basis. By comparison, water allocation is made through a basin planning approach which is intended to take into account water quality issues

While much attention is paid to managing the details of uniform water quality objectives, the broad objective of regional scale watershed management has been obscured. Also ignored is the natural variation in water quality that occurs across many watersheds and the need for enhanced protection of valued watersheds.

PROPOSED ACTION

1. Establish a Coordinated Policy for Water Quality and Quantity

It is recommended that Alberta Environment take a lead role in coordinating a comprehensive policy for the provincial management of water quality and quantity. The overall goal should be to establish practical water quality and water allocation objectives that integrate fisheries, general environmental and long term water use requirements. These objectives should be met through setting appropriate terms in water use and discharge licenses.

Consideration must be given to instream flow needs, water quality goals and water management goals established for both short and long term needs. The objectives should be developed on a regional watershed basis and should recognize the linkage between the existing river basin planning process, the current licensing system for use and discharge, and the Department's enforcement responsibility for the quality of discharged water.

These objectives should be established in consultation with other departments such as the Fish and Wildlife Division of the Department of Forestry, Lands and Wildlife, Community and Occupational Health and the public.

There is a need for better coordination of responsibilities in Alberta Environment for water allocation, effluent licensing and aquatic research. The existing division of accountability is ineffective and could be better directed to ensure better compliance with stated policies and goals for water management.

The *Clean Water Act* should be augmented with a clearly stated policy for water quality for specific watersheds. This policy should, at a minimum, include a commitment to maintain the present quality and improve it where it is clearly below provincial objectives. This policy should be developed with advice from the public, industry and experts.

2. Establish Effluent Standards for Pollution Sources for Each Watershed

Water quality management must first be approached from the perspective of protecting the resource and minimizing effluents.

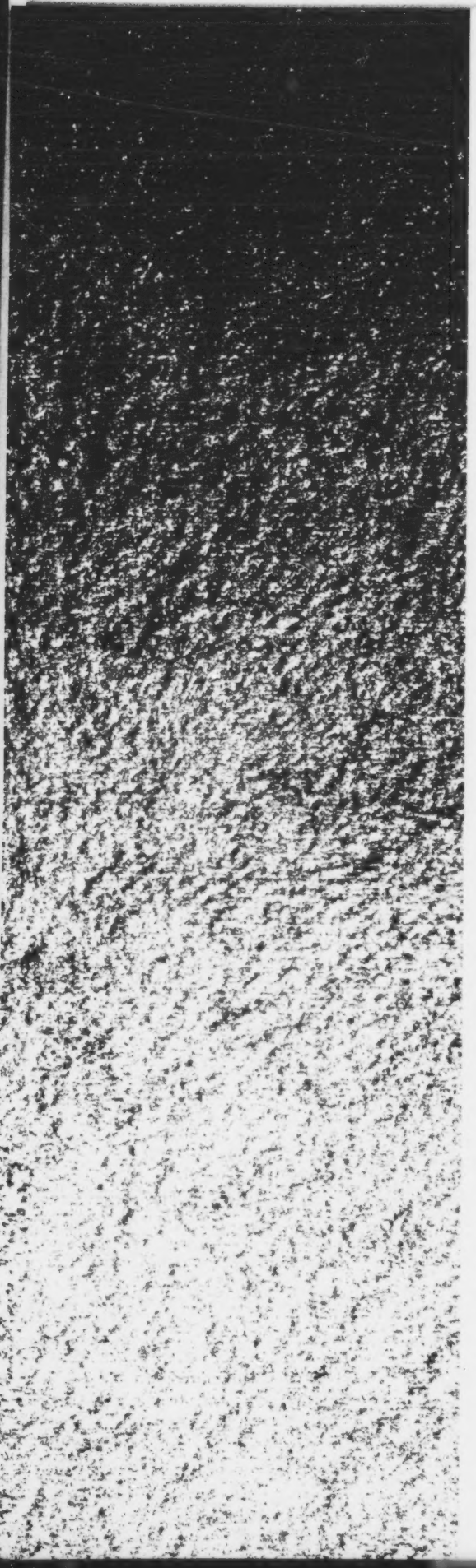
It is recommended that effluent standards for pollution sources be established for each watershed. These standards should be developed with public review and should be published. The standards should be carefully considered by the Department when developing license conditions.

3. Improve Interdepartmental Coordination

It is recommended that a comprehensive review of all potential uses be conducted when setting standards and when licensing water use in a watershed.

This is especially important in view of the fundamental conflict between the *Fisheries Act* and the *Clean Water* and *Water Resources Acts*. Special consideration should be given to improving interdepartmental coordination in setting effluent or consumptive standards and in the scope of considerations for protecting the aquatic environment before license conditions are set.

Licensing Procedures



Licensing Procedures

PRESENT SITUATION

The present licensing system is a closed system wherein license conditions are determined by negotiation between government and the applicant. Negotiations may continue for prolonged periods of time before license terms are finalized.

There is no public notice upon the receipt of an application for a license and there is no opportunity for public input into the decision to issue a license or the conditions of the license. This often leads to public frustration and a reliance on other licensing bodies, such as the Energy Resources Conservation Board, as a forum for the public to express their environmental concerns.

Although the Standards and Approvals Division may request a legal opinion on the enforceability of a specific license condition, there is no formal legal review of the enforceability of licences prior to being issued. This can lead to subsequent difficulties if the Pollution Control Division's efforts to respond to a pollution incident are unsuccessful because a license condition is unenforceable.

Once issued, a license is valid for five years during which time the conditions of the license cannot be changed without the consent of both parties. There is no consideration of individual circumstances wherein a longer or shorter license term may be preferable.

PROPOSED ACTION

1. Public Notice and Review of License Applications.

The Review Panel recommends that all applications for new and renewed licences under the *Clean Air Act* **and** *Clean Water Act* **be made known to the public through a notice in the newspaper, similar to the notification practices followed under the** *Water Resources Act.* The process should provide a reasonable opportunity for public response.

All applications should be available for public review, except for confidential information. A claim of confidentiality must be supported by the applicant and could ultimately be decided by an arbitration process similar to that developed under the Workplace Hazardous Materials Information System (WHMIS).

2. Legal Review of License Conditions.

It is recommended that senior legal counsel from the Attorney General's office conduct a review and provide assistance prior to the issuance of all licenses. Alberta Environment staff will be expected to call on legal resources to the fullest extent prior to issuing the license.

3. Public Notice of License Conditions.

It is recommended that upon issuing or renewing a license, a summary of the terms of the license be published in a local paper with full terms available to any member of the public without charge, upon request.

4. License Reviews

It is recommended that provision be included in the legislation to allow a licensee or the Minister to open up the terms of a license at any time for renegotiation, if it is in the public interest to do so. The final decision about the need to renegotiate a license should lie with the Minister.

5. License Renewals

It is recommended that all licenses be subject to renewal, although the renewal term may vary up to a maximum of ten years. This will lighten some of the burden which presently exists within the system, as well as create an incentive for good operators who will receive longer license terms.

Improvements in industrial technology and the opportunity for upgrading performance levels should be considered at the license renewal stage. Licensees should be required to incorporate new technology in situations where there are environmental or public health concerns.

This will require that Alberta Environment be mindful of the need to consider future retrofit requirements in issuing permits to construct. At the same time, industry will have to be increasingly sensitive to the possibility of more restrictive future standards and allow for the incorporation of technological improvements.

6. License Appeals

It is recommended that a license appeal process be established. This will act as a mechanism to:

- avoid the imposition of unrealistic terms, and
- ensure that license negotiations do not carry on indefinitely.

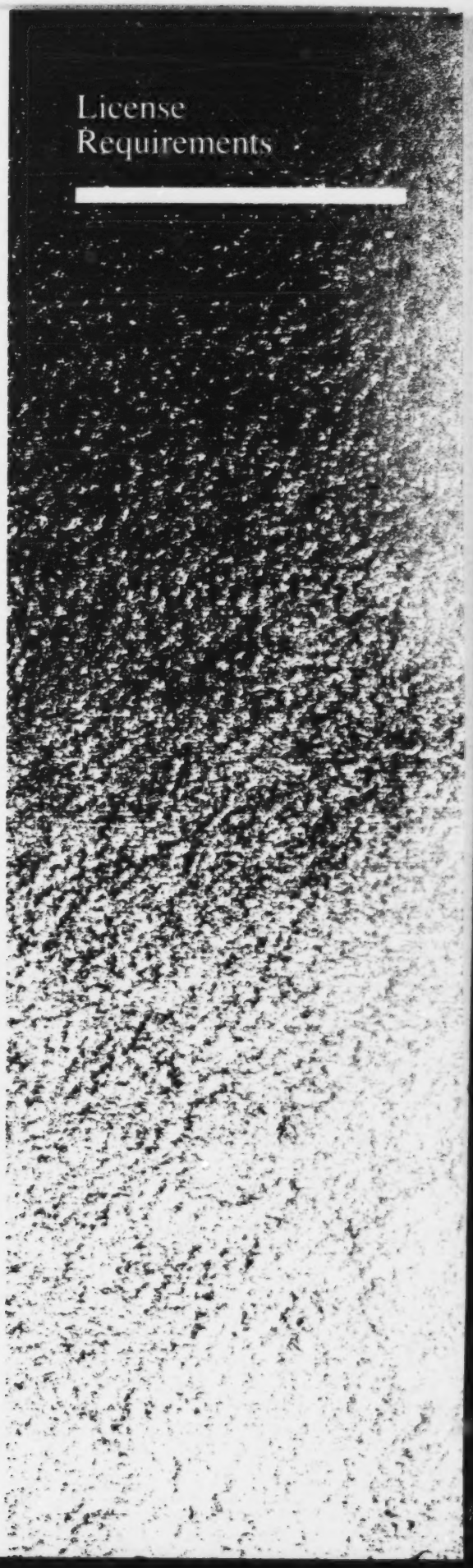
An appeal of a permit or license should go from the Director of Standards and Approvals to an appeal body.

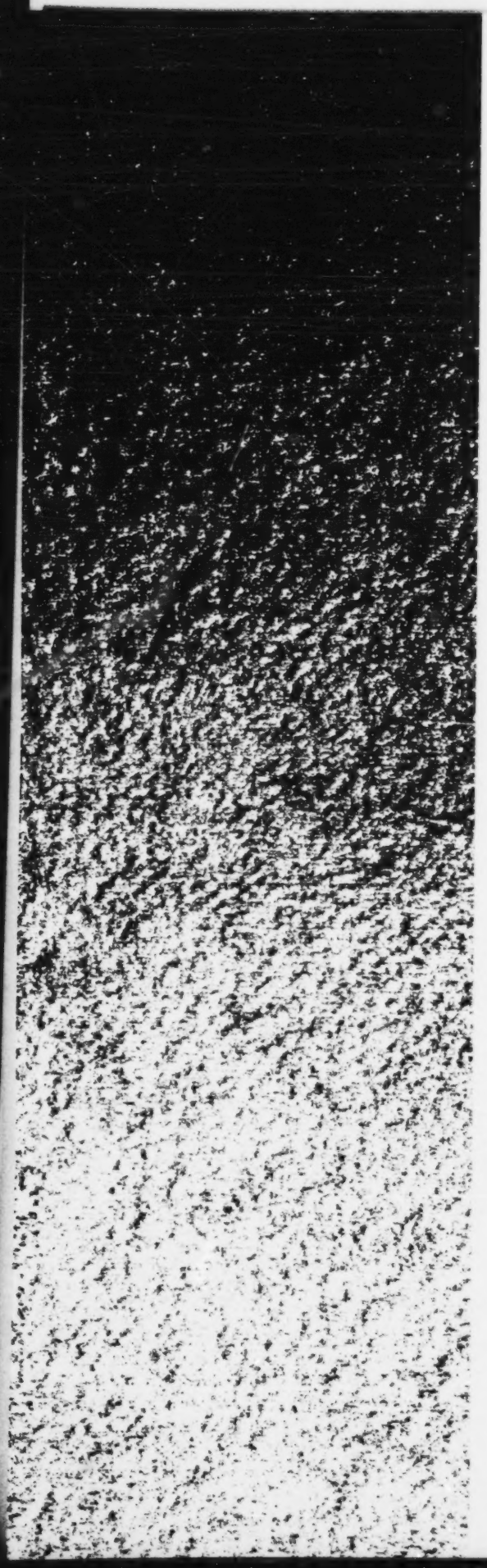
It is also recommended that a new appeal body be established to hear all appeals of licenses issued pursuant to environmental statutes. The Appeal Board should be made up of representatives from government, industry and the public.

Standing to appeal should be given to both the applicant and third parties who can demonstrate an interest and that they could be affected by the applicant's operation.

An appeal must be heard by the appeal body within the number of days set in the statute. Further appeals to the courts could only be based on a question of law or jurisdiction.

License Requirements





License Requirements

PRESENT SITUATION

Standards are limits on the amount of pollution that is acceptable and thereby give an indication of when preventative action is required. However, there is still a need for licenses which contain specific conditions relating to a facility's operation.

Concern has been expressed that license limits are presently negotiated on the basis of setting the lowest level possible recognizing that there will not be 100 percent compliance with the license terms. As a result, in some situations license limits may be unrealistically low with the understanding that they are not intended to be strictly enforced but rather to be viewed as a performance objective.

There has also been concern expressed about the Department's practice of including conditions in licenses waiving emission limits during start-up and shut-down situations. Waivers have been used as a means of dealing with the difficulties in controlling and monitoring emissions during these situations. Provisions also exist under the Clean Air (Maximum Levels) Regulations which has the effect of waiving emission limits in specified situations.

PROPOSED ACTION

1. Set Maximum Emission Limits

The Review Panel recommends that each license have maximum emission limit based on emission levels that could give rise to an immediate danger to human health, life, property or the environment. Because of the potential for serious environmental or health consequences arising from these limits being exceeded, they should apply to all operating situations, including start-up, shut down and commissioning situations.

2. Set Performance Emission Limits

The Review Panel recommends that each license contain performance limits based on past performance in the industry, available technology and established standards for that industry. Industrial standards should be determined by taking into account acceptable operating procedures for the industry, thereby maintaining an incentive to improve performance. The objective should be to upgrade poor operators' performance rather than penalize good operators.

The performance limit will apply to normal operations, as opposed to commissioning, planned start-up/shut-down or emergency situations.

This limit will include an acceptable variance in recognition of the normal variation in the operation of control technology.

It may be necessary to have both short (i.e. hourly or daily) and long term (i.e. quarterly or yearly) performance limits.

3. Declare Planned Start-ups and Shut-Downs

It is recommended that upon submission of an application for a license-to-operate, an applicant be required to include a declaration regarding the start-up sequence and/or the timing of start-up of the pollution control

equipment for the facility.

Where there are emissions associated with the start-up which are above the normal performance standards in license, the applicant will specify the maximum level and duration of these emissions in order to establish a start-up performance standard. Where required, a similar provision should be included for shut down.

Maximum emission limits will apply during these planned events.

It is also recommended that each applicant be required, as part of the license application, to conduct a worst case assessment for upset situations including a comprehensive response plan.

The response plan will be incorporated as part of the license requirements. Failure to follow the response plan will be an offense.

4. Conduct Emergency Risk Assessment

It is recommended that each applicant be required to carry out a risk assessment for emergency events which could result in the maximum emission limits being exceeded. This emergency response plan will be incorporated as part of the license. Failure to follow the plan should be considered an offense.

5. Issue Interim Licenses

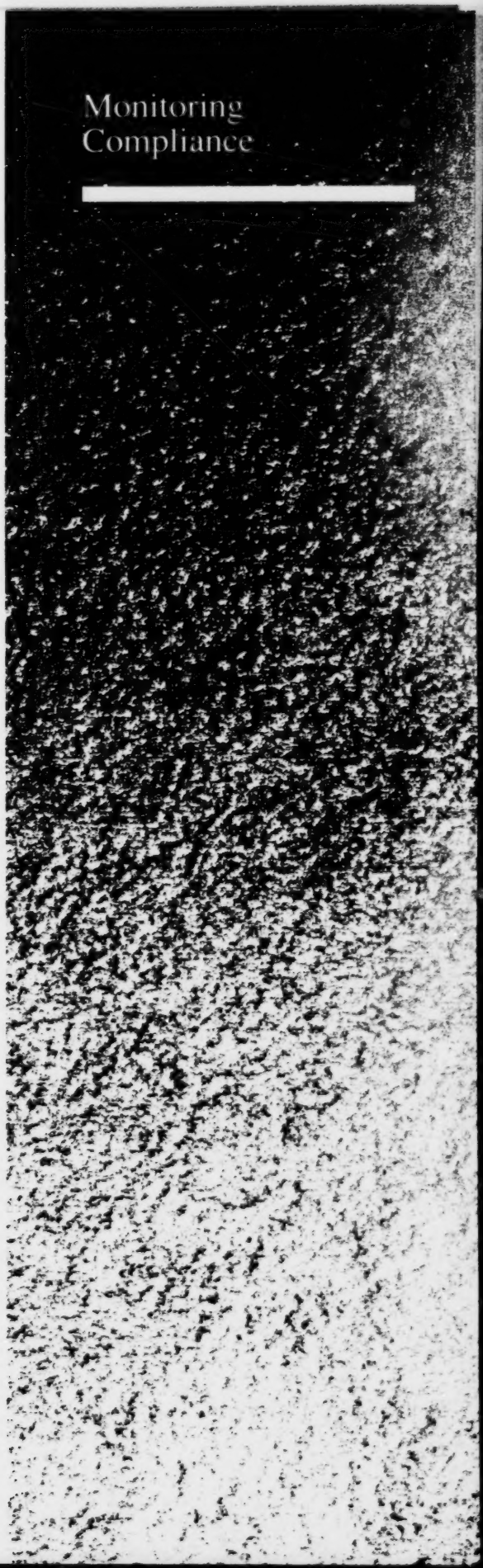
After issuing a permit-to-construct, it is recommended that the Department have the option of issuing a short term, interim license-to-operate for the commissioning period. The license will contain a maximum emission level and could include a higher than normal performance level if required. The interim license will be used as a basis for establishing the performance limits to be included in the final license-to-operate.

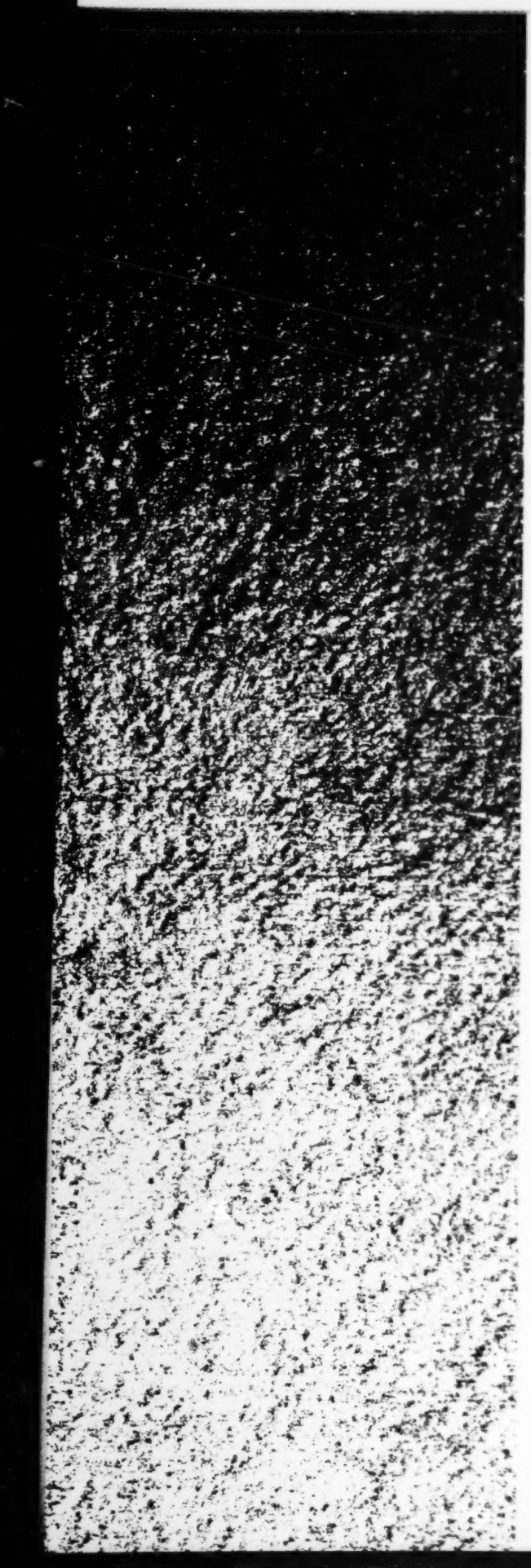
The Standards and Approvals Division will refer to the performance record under the interim license in addition to the other factors previously mentioned, when determining the conditions in the final license-to-operate.

6. Remove Waivers

The Review Panel rejects the concept of including waivers in legislation or licenses-to-operate whereby a licensee is exempt from license limits during start-up and shut-down situations. **It is recommended that these clauses be removed and that licensees be required to meet the maximum emission limits at all times.**

Monitoring Compliance





Monitoring Compliance

PRESENT SITUATION

In general, current air quality monitoring by the larger industries is extensive, particularly for sulphur dioxide and hydrogen sulphide from petroleum related industries and pulp plants. In fact a tremendous amount of hourly/daily/monthly data are accumulated. Similarly, industry and government presently accumulate a substantial base of data on aquatic effluents. However, measurement for smaller industries and other substances is less consistent. Monitoring tends to be either extensive or nonexistent. Little use is made of individual surveys to determine if problems exist.

Enforcement action may be hampered if measurement units in licences or regulations differ from those units obtained from the monitoring equipment.

1. Review Monitoring Requirements

Major sources of air and water contaminants should continue to be monitored at source. However, intermittent sampling is appropriate for many other situations with the frequency determined by:

- the gap between normal operations and the licensed standard,
- the likelihood of significant variations in operation, and
- the likely impact on the ambient air or water quality measured against the desired standard.

It is recommended that consideration be given to making more use of the single measurements to analyze a situation without requiring further monitoring where it is not warranted.

2. Require Back-up Monitoring

Where source monitoring equipment is also a control device in the operation and where public health, safety or significant damage to the environment is at stake on a short term basis, it may be appropriate to have a back up system to avoid operation without an operable monitoring systems. License conditions should also require reasonable standards for accuracy and service factors for important air and water monitoring.

It is recommended that back-up monitoring, accuracy and service requirements be established for these situations.

3. Monitor Ambient Concentrations

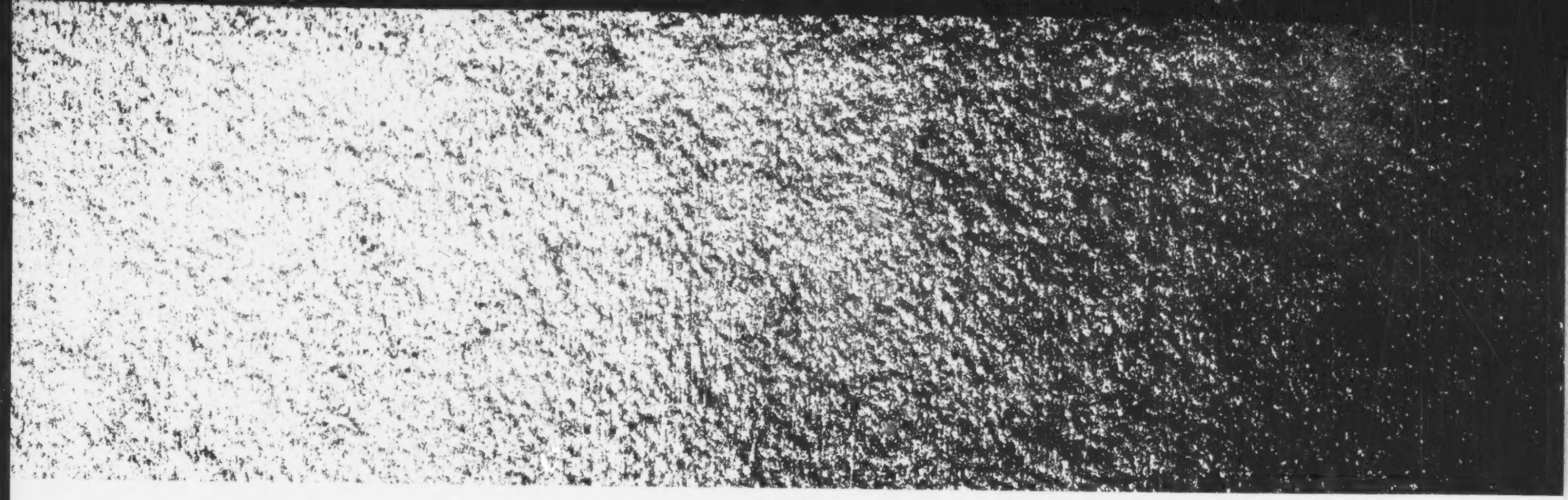
It is recommended that the requirements for regional and site specific ambient air monitoring be proportional to the amount and type of air emissions and account for the potential environmental and health effects within affected airsheds. Measurements of nuisance odours should be especially concentrated in populated areas or in areas where humans are exposed.

4. Monitoring Units

It is recommended that the unit of measurement stated in the license and the unit of measurement

supplied by monitoring equipment should be compatible. This will avoid the need to convert units in the event enforcement action is taken.

Administrative Responses to Non-Compliance



Administrative Responses to Non-Compliance

PRESENT SITUATION

Alberta's environmental statutes include strong administrative authority to achieve compliance through direct action by the use of control orders and stop orders. This reflects the philosophy that abatement is a complex technical area for which the courts are ill-suited. It also reflects the reality that environmental incidents require the ability to respond directly, quickly and decisively through administrative, as opposed to, court action.

However, the Courts do have an important role to play in enforcement both through deterrence and punishment of specific offenses.

To date, Alberta Environment has no formal enforcement policy but rather relies on a written summary of the Department's approach entitled *Approach to Pollution Control's Environmental Enforcement Program*. This document outlines a hierarchy of administrative and court based enforcement options available in response to situations of non-compliance including: technical discussions, directives, control orders, stop orders and prosecution. However, the present emphasis is on negotiated compliance with a focus on technical discussions, directives and control orders. Although prosecution can be initiated at any stage in the process, it has generally been considered as a last resort. Stop orders are very rarely used.

The authority to issue various types of control orders is delegated in the legislation (i.e. *Clean Air Act and Clean Water Acts*) to the Director of Pollution Control while the authority to issue stop orders is reserved to the Minister of Environment.

The Approach to Pollution Control's Environmental Enforcement Program outlines some general guidelines indicating which of the enforcement options should be considered under certain circumstances. However, the Director of Pollution Control has fairly broad discretion, within the bounds of the legislation, in determining the appropriate enforcement response.

The lack of a clear policy framework has resulted in a failure to exercise the authority to issue control orders and stop orders on a regular and consistent basis, thereby creating the overall impression that the legislation and associated regulatory regime is ineffective. There is also a lack of a clear understanding about the legal prerequisites for exercising administrative powers currently available under the legislation.

This has led to concern by industry that enforcement responses are not uniform across the Province and as a result, those companies with a good compliance record are put at an unfair disadvantage. The public perceives the lack of enforcement which can lead to prosecution, as a failure to "get tough" with polluters.

The high reliance on negotiation can lead to a long delay between a violation occurring and the enforcement response. This can also result in an excessive amount of time being spent by abatement personnel in technical discussions, which may or may not lead to a solution to the problem.

In the event of a breach of a license limit, the licensee and the government may conduct technical discussions to determine the most appropriate methods to achieve compliance. However, the public perceives a license as a number much like a speed limit, which must be strictly enforced if violated. This has given rise to credibility problems for the Department.

The Department relies on directives as a method to request that certain action be taken. However, the *Clean Water Act* and *Clean Air Act* do not refer to the use of directives as an enforcement tool but rather, as a means to formally request that information be submitted.

Concern has also arisen over the imbalance between enforcement action taken against industrial and municipal operators. Generally speaking, there has been minimal enforcement

action taken against municipalities even though they probably represent a significant source of pollution.

In general, the lack of a clear enforcement policy, the wide range of enforcement options and the wide discretion in determining the appropriate enforcement option have led to confusion on the part of Department staff, licensees and the public about the appropriate response when license limits are exceeded.

There are also gaps in the legislative provisions especially in the area of controlling unlicensed air emissions. There is presently minimal power to issue a control order against unregulated or unlicensed sources of emissions and there is no general offense provision under the *Clean Air Act* .

PROPOSED ACTION

1. Develop a Formal Enforcement Policy

As previously mentioned the Department has changed its mandate from balancing environmental protection and development, to one of achieving the protection, improvement and wise use of the environment. **The Review Panel recommends that Alberta Environment develop a formal enforcement policy reflecting this new mandate.**

An enforcement model is outlined in this Action Plan to illustrate how this Enforcement Policy should operate for violations of license emission limits. This policy should be applied equally to all parties including municipalities, Crown corporations and government agencies.

2. Contents of the Enforcement Policy

It is recommended that the enforcement policy include detailed criteria for enforcement response giving a clear direction to enforcement officers. The policy should also state that in situations where elements of an offense exist and the decision is made not to take enforcement action, written reasons should be provided and kept on file.

The proposed Enforcement Policy should provide clear guidance for the exercise of the authority to issue orders or recommend prosecution. Control orders should be issued without referral for approval by senior management, as a normal function of enforcement. The power to issue stop orders should be formally delegated outside the Minister's office to a senior official. Existing provisions allowing for appeals of stop orders or control orders should be repealed.

It is further recommended that the policy document incorporating the enforcement model be circulated for public review and further refinement. It should also be approved by the Government.

3. Develop an Enforcement Manual

It is recommended that a manual be developed to assist enforcement officers in the practical interpretation of the enforcement policy. This manual should be a public document which incorporates the best features of existing manuals in other jurisdictions.

Significant coordination with appropriate legal advisory staff, other regulatory enforcement experts and the public will be

required in the formulation of this manual.

4. Restrict Use of Directives

It is recommended that directives be used only to require that information be submitted. Control orders and stop orders should be used to require that certain action is taken.

5. Enforcement Response for Unregulated Operations

It is recommended that consideration be given to amending the legislation to allow for a new type of order to "suspend" operations. This order should be used by field personnel to control unregulated operations that are a source of pollution. This will require legislative amendments to include a provision for orders prohibiting the release of an air or water contaminant if it is likely to be harmful to human health or the environment.

It is further recommended that consideration be given to including a general offense provision in the *Clean Air Act*, similar to section 17 of the *Clean Water Act*. This would allow for enforcement action against unregulated operations which are a source of pollution.

6. Enforcement Model for Violations of License Emission Limits

The Review Panel recommends the adoption of the following enforcement model to deal with the above noted problems associated with responding to violations of license limits. A graphic depiction of this model is outlined in Chart A of this report.

The proposed model moves the enforcement discretion from the back end of the system, (i.e. enforcement) to the front end of the system (i.e. licensing). License conditions will still be based on set standards. However, the enforcement policy should also include provisions outlining the automatic enforcement response which will occur in the event of a breach of a license limit. The effect of this shift will be two-fold. It will place the emphasis on first negotiating more realistic license emission limits. Secondly, it will set out the enforcement response in advance ensuring that all parties are clear about the consequences of failing to comply with license limits.

Since the appropriate enforcement response has been considered when the emission limits were set, there will be no need for further discussions about this issue after a violation has occurred. This will provide clear direction for enforcement officers. It will also remove some of the existing discretion in the enforcement system thereby providing a more uniform and predictable enforcement response.

The appropriate enforcement response will henceforth, not depend on whether or not the licensee was negligent, but rather on the degree the emission exceeds quantitative measures. The proposed enforcement model would operate as follows:

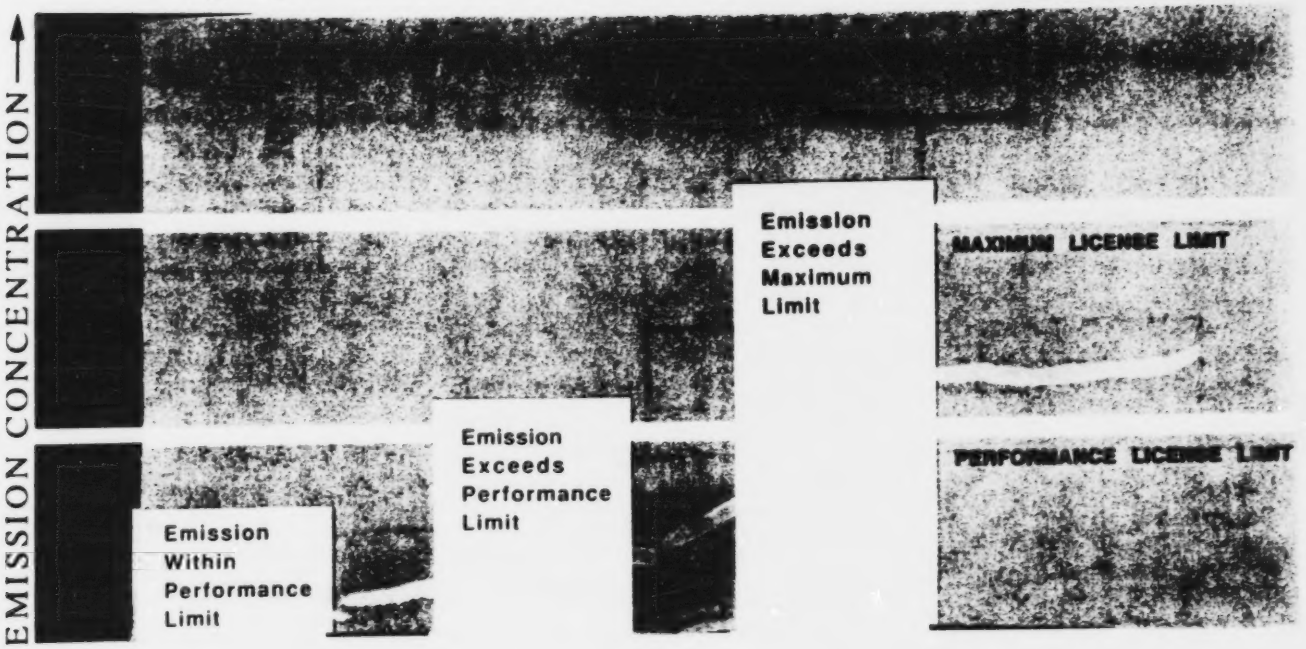
- As previously mentioned, there will be two license limits established, a maximum emission limit and a performance limit. These limits will be developed taking into account our earlier recommendations about public involvement in the licensing process.

- Because of the potential for serious environmental or health consequences, Alberta Environment officials will automatically conduct a thorough investigation whenever the maximum limit is exceeded. A stop order will be issued and prosecution will always be initiated in all situations where the maximum limit is exceeded and there is sufficient legally admissible evidence available.
- Failure to comply with a stop order will result in court proceedings to enforce the stop order and prosecution. Failure to comply with the court order will result in civil contempt of court proceedings to enforce the order as is currently provided under both the *Clean Air Act* and *Clean Water Act*
- A summary of the enforcement response for violations of maximum emission limits is outlined in Chart C.
- Slightly higher performance emission limits for the commissioning period may be set in an interim license. This reflects the difficulty for some facilities in determining and maintaining emission limits during the initial stages of their operation.
- All deviations from the performance limit will be subject to an immediate control order.
- Failure to comply with a control order will result in a prosecution for failure to comply with a control order. A stop order shall also be issued to suspend operations except in the most exceptional situations, until the facility is brought in compliance with the requirements of the control order.
- Failure to comply with a stop order will result in both court proceedings to enforce the stop order and prosecution.
- Failure to comply with any court order will result in civil contempt of court proceedings.
- A summary of the enforcement response for violations of performance emission limits is outlined in Chart B.
- The offense of failure to comply with a control or stop order should be considered as an absolute liability offense. Therefore, the defense of due diligence will not be available. All other offenses mentioned in the above model will be considered as strict liability offenses.

It is recommended that the above model be implemented by prioritizing industries with unacceptable waiver clauses in air and water licences and those with performance problems. Licenses with waiver clauses must be phased out as quickly as possible.

Chart A

Enforcement Responses for Violations of License Limits



No Enforcement Response Required

Enforcement Sequence Initiated (see Chart B)

Enforcement Sequence Initiated (see Chart C)

Chart B

Enforcement Sequence for Violations of Performance Emission Limits

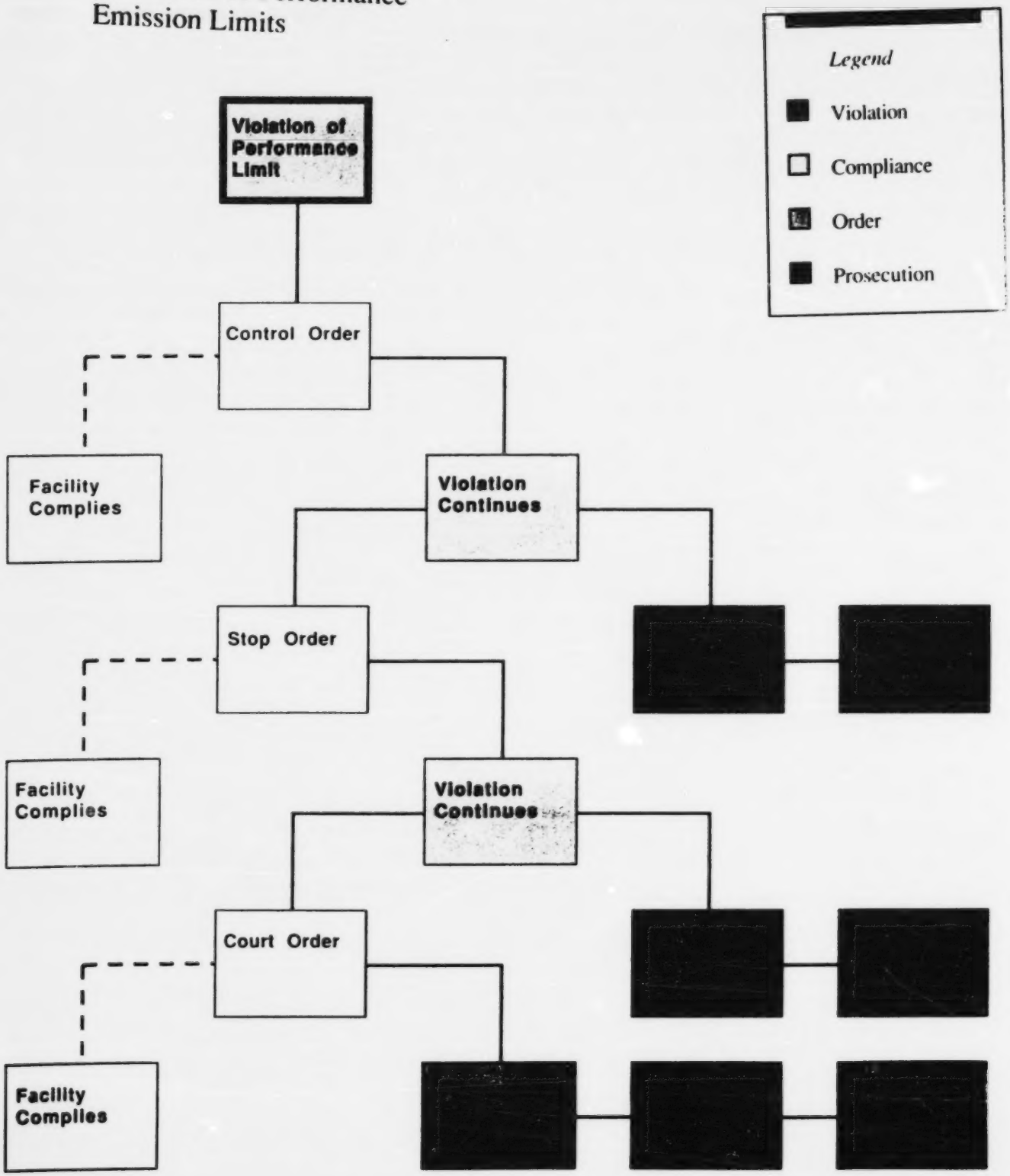
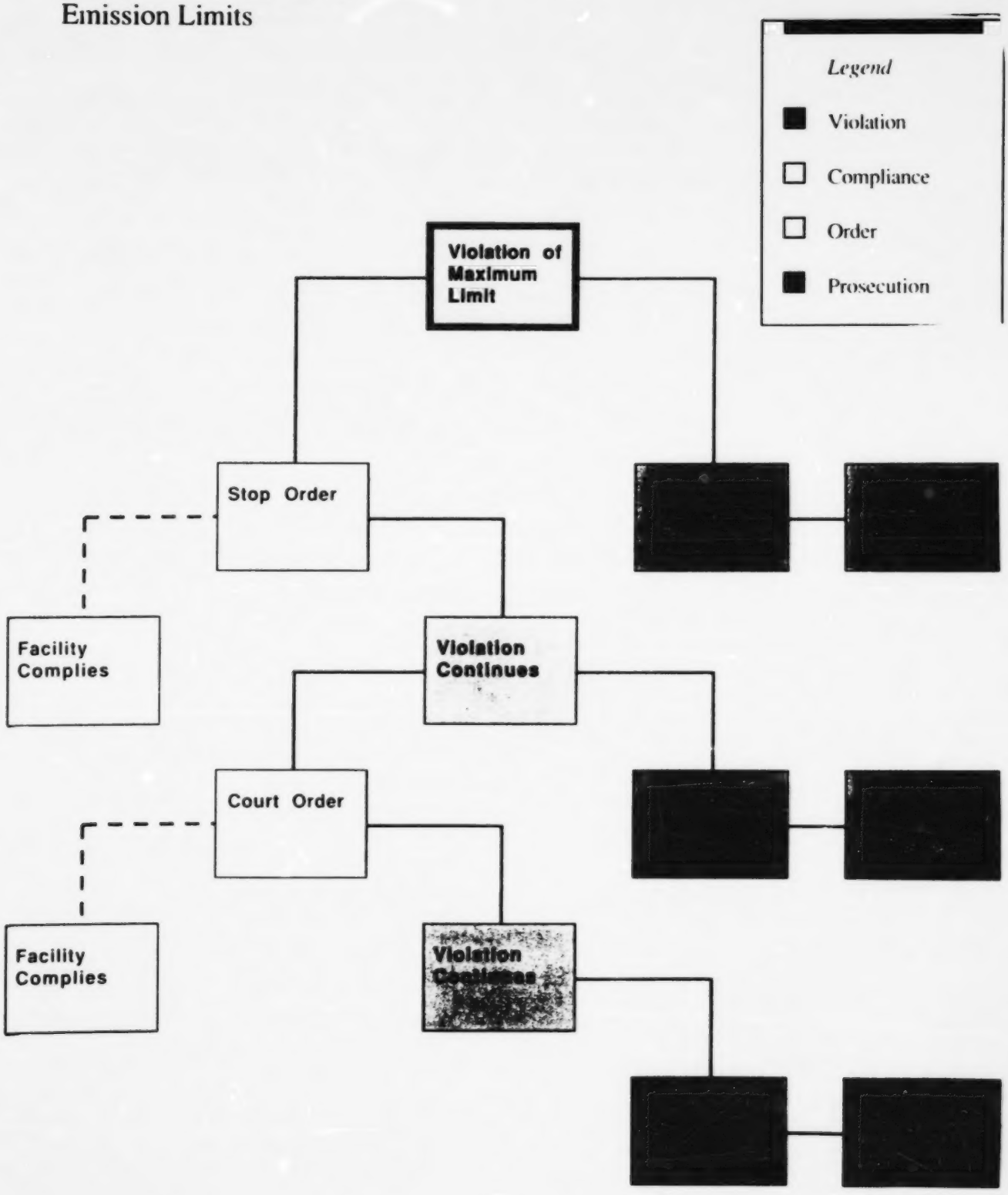
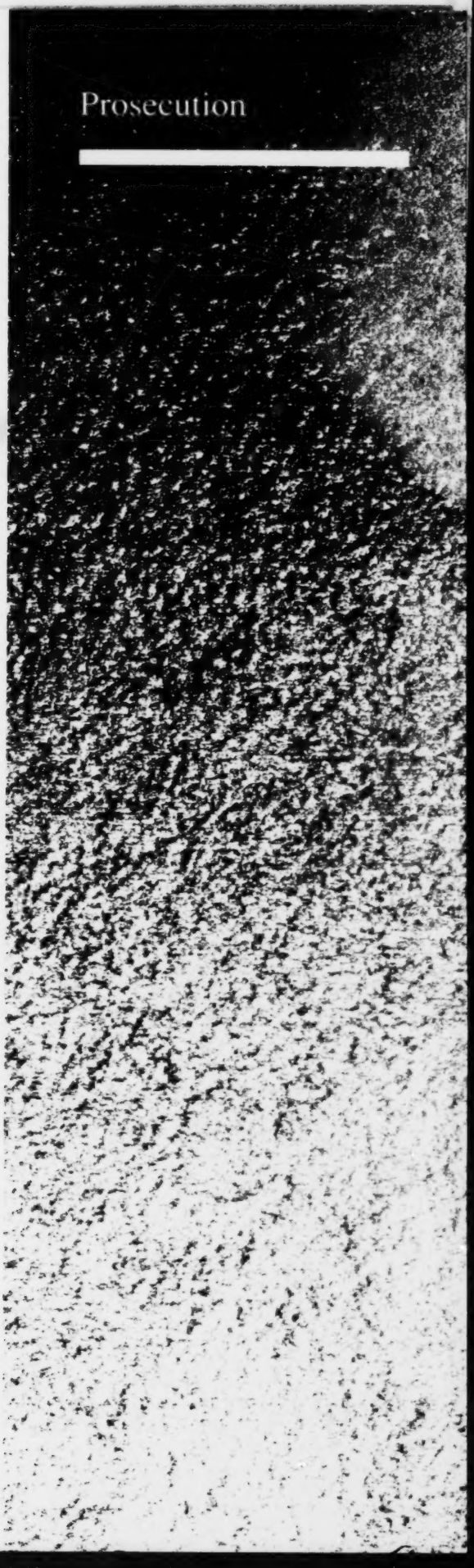


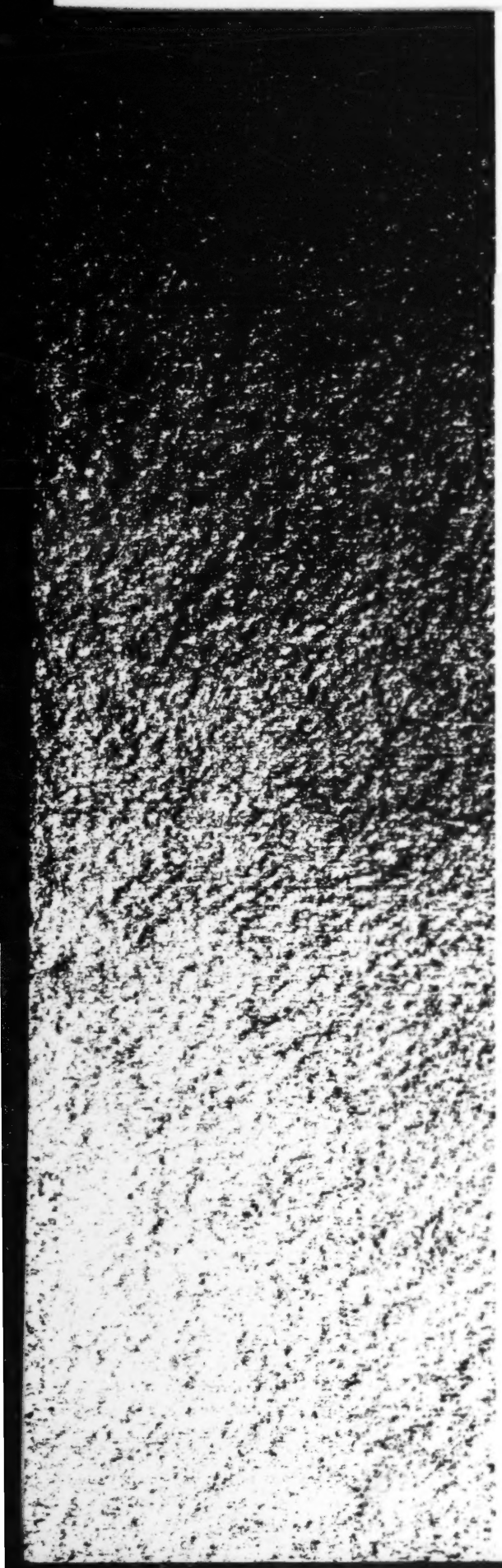
Chart C

Enforcement Sequence for Violations of Maximum Emission Limits



Prosecution





Prosecution

PRESENT SITUATION

In order for any environmental enforcement system to be effective, it is essential that there be included an ability to resort to prosecution for clearly defined offenses. Although the existing enforcement hierarchy allows for prosecution at any stage in the enforcement proceedings in practice, it has been the option of last resort.

The Approach to Pollution Control's Environmental Enforcement Program contains some criteria which outlines when prosecution will be considered. However, these criteria do not list specific types of offenses and as a result there is still a wide range of discretion in the decision whether or not to recommend prosecution.

The decision to recommend prosecution is made within Alberta Environment, without any formal system for other departments with an interest in environmental issues to have input into this decision. There is some interdepartmental coordination between Alberta Environment and the Fish and Wildlife Division of the Department of Forestry, Lands and Wildlife and the Energy Resources Conservation Board, but this is generally limited to water allocation issues and often ignores water quality issues.

Ticketing is a type of prosecution process which has received little recognition in Alberta. Tickets are generally recognized as useful enforcement tools for minor offenses where it is unlikely that the offender will contest the ticket because of the minimal fine.

Various environmental statutes, in combination with the *Summary Convictions Act*, are directly enforceable by issuing tickets with specific fines. Although the potential use of this enforcement tool has been recognized for a number of years, only a limited number of provisions have actually been identified in the regulation pursuant to the *Summary Convictions Act*.

To date, existing field staff are not trained or certified as special constables and are therefore, unable to issue tickets.

PROPOSED ACTION

1. Clearly Define Prosecutable Offenses

Prosecution is supplemental to the administrative process. It is not intended to directly achieve compliance with set standards but rather to send a message to polluters that this conduct will not be tolerated and there will be a penalty extracted for that particular violation. This also provides a deterrent to the specific offender and to other potential offenders.

It is recommended that prosecution be used for clearly defined offenses. This is desirable so that all parties know the consequences associated with violating the legislation. The proposed enforcement policy should clearly state what is considered as an automatic prosecutable offense. For example, the proposed enforcement model previously outlined for violation of license limits, clearly states that prosecution will occur when the maximum limit is exceeded and when there is a failure to comply with a control or stop order.

It is necessary to specify other violations that will automatically result in prosecution. Since the current approach of Alberta Environment involving negotiation and abatement relies heavily on accurate monitoring and timely reporting, any breaches in this regard should be treated extremely seriously. Offenses such as failure to report to authorities any uncontrolled releases, providing false information and failure to obtain a permit or license should also result in automatic prosecution.

2. Evidence

A critical factor for successful prosecutions is the availability of sufficient legally admissible evidence. The Department will still rely on industry self monitoring and reporting to determine whether there is compliance with the legislation. **The Review Panel recommends that contravention reports supplied by licensees be required to contain more detailed explanations of the cause and effect of the contravention.** This will assist the Department in assessing whether the defense of due diligence is available as well as determining the appropriate enforcement response.

It is recommended that adequate resources be dedicated to the Department's quality assurance program to ensure the accuracy of monitoring information.

Field staff from the proposed Investigation Branch of the Pollution Control Division will be responsible for on-site investigation of all potential breaches of legislation. They will gather information and evidence to be used by the proposed Enforcement Branch when determining the appropriate enforcement response.

It is further recommended that the legislation state that all evidence, including that which is supplied pursuant to self reporting requirements, may be utilized by the authorities in a court proceeding. This will ensure that all parties clearly understand what evidence may be used in legal proceedings.

It is also recommended that the legislation be amended to state that monitoring data provided pursuant to a license condition shall be deemed to be accurate and admissible as proof of the contravention of emission limits. This will avoid the possibility of licensees contesting the accuracy of their data in an attempt to raise a reasonable doubt and thereby avoid conviction.

3. Recommending Prosecution.

It is recommended that the decision to commence an investigation be made at an operational level.

Once a decision has been made to investigate an alleged breach, Alberta Environment officials should work closely, at the earliest stage, with the Crown Prosecutor to ensure that all legally admissible evidence is obtained, catalogued and prepared for eventual presentation to the Courts. This catalogued evidence should be presented to the Crown Prosecutor for a decision whether a charge can be laid.

The Review Panel considered the question of seconding a Crown Prosecutor to work within the Department of Environment and has rejected this idea for a variety of reasons including the major problem of the Crown Prosecutor having the appearance of losing their professional independence by becoming too closely identified with a particular client or cause.

4. Authority to Lay Charges

It is recommended that section 17(9) of the *Clean Water Act*, which requires the Attorney General's consent prior to a charge being initiated under that section, be repealed.

5. Due Diligence

The Review Panel recognizes the decision of the Supreme Court of Canada in the case of **R.v. City of Sault St. Marie** which allows the defense of due diligence in public welfare offenses. **It is recommended that any evidence that would point towards a defense of due diligence be examined before a charge is processed.** This examination will be assisted by the previously mentioned requirements that contravention reports supplied by licensees contain detailed explanations and descriptions of the cause of an incident.

It is further recommended that Alberta Environment staff receive training about what constitutes due diligence and what type of evidence should be gathered to counter this defense.

Because the integrity of the enforcement system relies on licensing and self reporting, it is recommended that the following offenses be considered as absolute liability offenses:

- **failure to obtain a permit or licence (s.3 (12)(a) and 4(8)(a) of the *Clean Air Act* and s.3(12)(a) and s.4(8)(a) of the Clean Water Act),**
- **failure to report a spill (s.13 Clean Air (General) Regulations, and s.10 Clean Water (General) Regulations),**
- **submitting false information (s. 15.3 *Clean Air Act* and s.18.2 *Clean Water Act*),**
- **failure to take immediate emergency measures in the event of a spill of a hazardous chemical (s.7.1 *Hazardous Chemicals Act*)**
- **failure to comply with a stop order (s.15(4) *Clean Water Act* and s.14(4) *Clean Air Act*),**
- **failure to comply with a control order (s.13(9) *Clean Air Act* and s.14 (9) *Clean Water Act*), and**
- **failure to use manifest (s.7.3 *Hazardous Chemicals Act*).**

The Panel recommends a thorough review of the implications of the Charter of Rights and Freedoms prior to designating an offense as one of absolute liability.

6. Actively Use Tickets

It is recommended that Alberta Environment actively enforce minor violations of environmental statutes through the use of tickets. The enforcement policy should refer to tickets as an available enforcement option. The policy should also contain specific criteria to be used when deciding whether tickets should be issued.

7. Expand the Number of Offenses Allowing Tickets

It is recommended that a comprehensive review of existing offense provisions be conducted with a view to expanding the list of minor offenses under the *Summary Convictions Act* **and Regulations for which tickets may be issued.** The Violation Ticket Regulation under the *Summary Convictions Act* should be amended to explicitly allow tickets for noise, odour and dust contraventions.

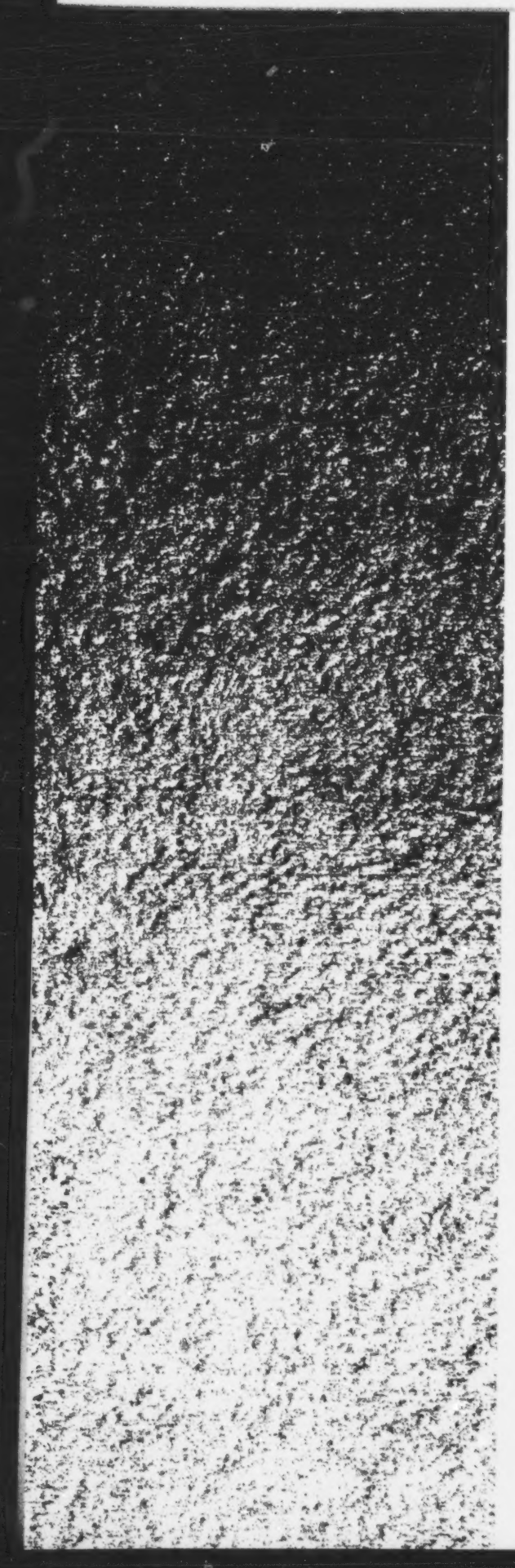
8. Designate Enforcement Staff as Special Constables

The Review Panel recommends that Alberta Environment enforcement staff be designated as special constables and receive the necessary training.

9. Increase Fines for Ticket Offenses

It is recommended that an increase in the amount of the fines for offenses wherein tickets are available be considered.

Offenses and Penalties



Offenses and Penalties

PRESENT SITUATION

The focus of the penalty sections in the *Clean Air Act* and *Clean Water Act* is to levy fines. There is no provision allowing for court orders requiring specific steps be taken, as is provided in other legislation such as the *Fisheries Act*.

Provincial court judges look to the fine provisions of legislation as a indication of the seriousness with which the legislators consider an offense. The designated fines under Alberta legislation are lower than that of some other jurisdictions.

Penalty provisions under the *Clean Air Act* and *Clean Water Act* do not provide for increased penalties for repeat offenders.

Some offense provisions under the *Clean Air Act* and *Clean Water Act* do not state that each day is a separate offense. As a result, the amount of the fine under those offenses may not reflect the length of time that the offense occurred.

There is no provision allowing the courts to order that any monetary gain achieved through the failure to comply with a statute be included in the fine. As a result, it is possible that an offender can gain monetarily by failing to comply with the statute. In this situation the fine merely becomes a cost of doing business, and is no longer an effective deterrent.

The Crown and Crown corporations are only bound by a limited number of provisions of the *Clean Air Act* and *Clean Water Act* (i.e. the permit and license provisions). The Crown may be involved in large projects which have an environmental impact, and thereby get preferential status over other industrial operators.

The existing provisions under the *Clean Air Act* or *Clean Water Act* make a "person" who is guilty of an offense liable under the Act. There are also provisions under the Criminal Code (section 21) wherein a person can be held to be a party to an offense through aiding and abetting another. However, the extent of the liability of directors, officers and employees is not clearly stated in environmental legislation and it is awkward to rely on the Criminal Code provision.

PROPOSED ACTION

1. Allow for Court Orders

It is recommended that the *Clean Air Act* and *Clean Water Act* be amended to allow for court orders to enable penalties that reflect the specific fact situation, instead of relying solely on fines. Judges should be given powers to make these orders. Examples might include orders requiring that:

- specific action be taken to remedy a situation,
- security be posted to ensure compliance with an order, or
- an offender perform community service.

2. Review Structure for Fines

It is recommended that a review be conducted of the structure for fines under Alberta's environmental legislation compared to other provincial and federal legislation. This will ensure Alberta is in line with other jurisdictions and that the legislation reflects the seriousness with which legislators treat environmental offenses.

The Review Panel considered the need for higher fines for corporate offenders, as opposed to individual offenders, and for repeat offenders. **It is recommended that such issues be left to the**

judge's discretion when sentencing.

3. Designate Each Day as a Separate Offense

The Review Panel recommends that the legislation state specifically that each day is considered to be a separate offense.

4. Orders Removing Financial Gains Achieved by Polluting

It is recommended that specific reference be included in the penalty provisions to allow judges to consider any financial gain achieved by the offender when setting the amount of the fine. This would avoid the situation of fines for pollution events being considered as a cost of doing business and prevent polluters from benefiting by ignoring the law.

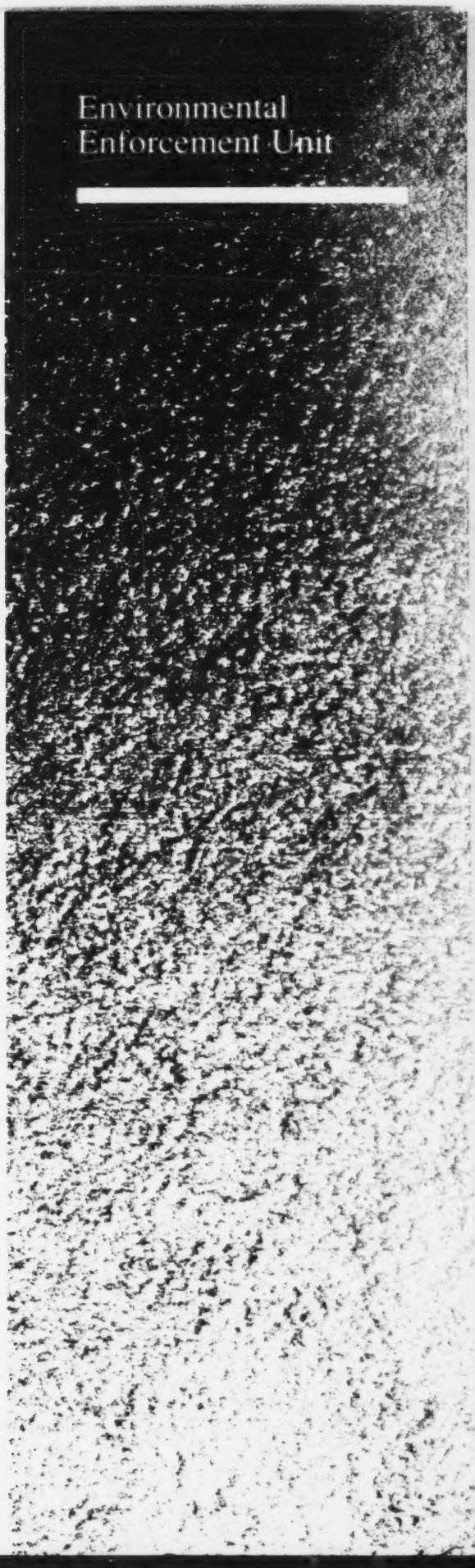
5. Liability of the Crown and Crown Agencies

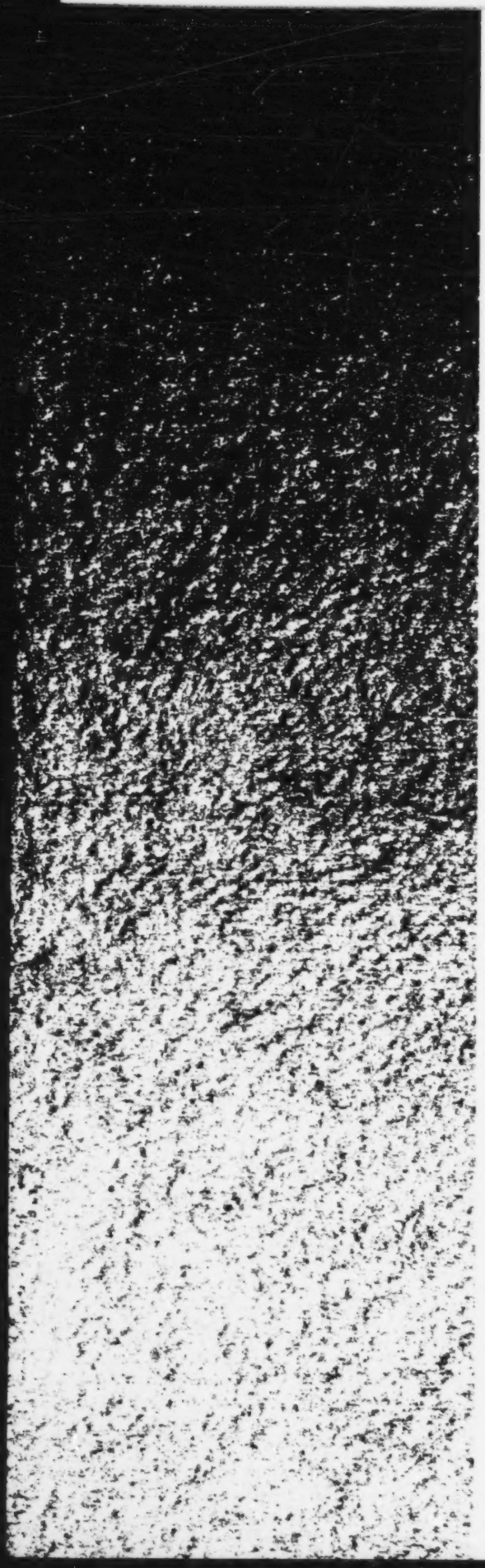
It is recommended that Crown corporations and Crown agencies be bound by all the provisions of the *Clean Air Act* and *Clean Water Act.*

6. Personal Liability of Individuals Involved in Corporate Offenses

The existing provisions under section 21 of the Criminal Code and the offense provisions under the *Clean Air Act* and *Clean Water Act* do not clearly identify the extent of personal liability of directors, officers and employees of a corporation for pollution offenses. **It is recommended that this be clarified by amending environmental statutes to specifically state that all individuals involved with a company, whether they be directors, officers or employees, can be personally liable for those violations in which they have a clear or direct involvement.**

The criteria for laying charges should be limited to those situations where the individual committed a flagrant violation or those situations where shell companies are used to avoid liability.


Environmental
Enforcement Unit



Environmental Enforcement Unit

PRESENT SITUATION

The current mandate of the Pollution Control Division consists of a number of monitoring, licensing, abatement and enforcement activities. In addition to its enforcement mandate, the Pollution Control Division is presently responsible for:

- conducting monitoring programs on the condition of the natural environment,
- conducting surveillance and quality assurance programs on facilities to ensure their compliance with environmental legislation,
- responding to emergency situations,
- responding to public complaints,
- licensing pesticide applicators and sewage facilities,
- administering municipal grants, and
- providing support for setting standards and license conditions.

These duties can affect the ability of the Division to enforce environmental legislation because they impose an additional demand on resources and divert the focus of the Division away from enforcement. This can seriously diminish the effectiveness of the Department's environmental law enforcement program.

Under the existing organizational structure, if an inspector discovers a situation of non-compliance, he generally tries to cooperate with the operator to solve the problem and achieve compliance.

A matter is referred to the Director of Pollution Control if an inspector decides that a suspected breach of the legislation warrants an investigation. Since there is no enforcement division, inspectors often remain involved in the case even after an investigation is commenced. At present, there is only one enforcement officer in the Pollution Control Division who is responsible for laying informations and preparing evidence in the event a decision is made to prosecute.

Concern has been expressed that the same individual cannot effectively carry out the dual roles of inspector/negotiator and enforcer. Suggestions have been made that the attitude of an operator towards an inspector will change once they are involved in enforcement action, thereby making it more difficult to carry out the negotiation/ abatement role later on. It is also possible that abatement officers will be reluctant to move into an enforcement mode when they have been working on a problem because it could be considered a failure to solve the problem or harmful to the future working relationship.

A conflict presently exists between officials from the Fish and Wildlife Division of the Department of Forestry, Lands and Wildlife, and Alberta Environment with respect to enforcement action under environmental legislation. An enforcement review committee regularly deals with actions under the *Fisheries Act* and the *Water Resources Act* while no such cooperation exists between these two departments under the *Clean Water Act*.

PROPOSED ACTION

1. Change the Mandate of the Pollution Control Division

While the Review Panel recognizes the good working relationship that has developed between the Pollution Control Division and industry, it also recognizes the need for an organization dedicated to enforcement activities. This organization can work most effectively where enforcement officials are not also functioning as abatement personnel.

It is recommended that the mandate of the Pollution Control Division be limited to carrying out enforcement actions. This

would include issuing orders, gathering evidence, assessing evidence and making decisions to recommend prosecution. A summary of the responsibilities of the restructured division is outlined in Chart D.

All enforcement activities carried out by other Divisions, for example cease construction orders currently issued by the Standards and Approvals Division, should also be carried out by the Pollution Control Division.

All monitoring, abatement and licensing activities should be assigned outside the Pollution Control Division.

It is further recommended that the restructured Pollution Control Division carry out its enforcement mandate according to the Department's Enforcement Policy previously discussed.

2. Composition of the Restructured Pollution Control Division.

The Review Panel recommends that the restructured Pollution Control Division consist of two Branches, an Investigation Branch and an Enforcement Branch.

The Investigation Branch should be responsible for responding to public complaints and emergencies, gathering evidence, reviewing source monitoring information where a breach has occurred, and conducting quality assurance programs. They will be a fact finding and information gathering Branch and will not play a role in determining the appropriate enforcement response to the breaches they investigate.

It is recommended that the Investigative Branch staff have a strong technical background and receive training in collecting legal samples and other investigative skills.

The Enforcement Branch should be responsible for determining the appropriate enforcement response once an investigation has been conducted. This would include issuing control orders and stop orders, making decisions to recommend prosecution, assessing evidence and working with Crown prosecutors during the prosecution. As the technical discussions will take place at the licensing stage, there is no need for these officers to enter into technical discussions except with respect to the conditions of a control order.

It is recommended that the staff of the Enforcement Branch have a strong background in enforcement operations and legal and court proceedings. A strong technical background and training in investigative skills will also be required.

3. Improve Intradepartmental Coordination

The Review Panel recommends that the abatement activities previously carried out by the Pollution Control Division be transferred outside the Division.

The Standards and Approvals Division's mandate should focus on pollution prevention.

In addition to their mandate to issue permits and set source standards, they should be responsible for training operators, and reviewing ambient monitoring. They should also be responsible for reviewing source emission monitoring reports and referring possible contraventions to the restructured Pollution Control Division for further investigation and potential enforcement action.

Operators would still be required to advise Pollution Control Division staff of uncontrolled releases as required under the

existing legislation, however, Pollution Control Division would also rely on the Standards and Approvals Division to forward all source monitoring reports which indicate a potential violation for further investigation. This necessitates a close working relationship between the two Divisions.

It is further recommended that all staff have clear directions about the procedures to follow in the event of a potential breach of environmental legislation to ensure all parties understand at what stage abatement activities should cease and enforcement activities begin.

It is also recommended that there be an ongoing audit and evaluation of the intradepartmental referral system on enforcement to ensure abatement activities are not carried on past this stage and that enforcement action is initiated immediately where appropriate.

4. Improve Investigative Skills

The Pollution Control Division must have adequate resources to conduct thorough investigations. **It is recommended that the Director of the Division have the authority to order all the necessary technical and scientific analysis to support enforcement operations.** This will necessitate a dedication of laboratory services provided by the Alberta Environmental Centre at Vegreville. There must also be allocation of sufficient resources to provide for complete analytical services from laboratories within and outside of government in order to support investigative operations.

5. Conduct Quality Assurance Program

It is recommended that the Investigation Branch of the reorganized Pollution Control Division conduct a comprehensive quality assurance program to ensure that monitoring equipment is properly calibrated and that data submitted by operators is accurate and useable for enforcement purposes. Moreover, industry should be strongly encouraged to establish and maintain comprehensive quality assurance monitoring networks for all environmental analyses.

Operators who do not enter into self regulating and quality assurance programs should be dealt with through the issuance of shorter term licences or by issuing tickets for having inoperable equipment.

6. Improve Interdepartmental Liaison

The present system for coordinating interdepartmental enforcement action is too narrowly focused, does not include all departments involved in environmental issues and is conducted on an *ad hoc* basis.

The Review Panel recommends a review and restructuring of this system to coordinate enforcement action between departments involved in environmental enforcement thereby preventing gaps and overlaps.

This interdepartmental coordination system should include senior representatives from Alberta Environment, Forestry, Lands and Wildlife, Community and Occupational Health, Alberta Public Safety Services, the Energy Resources Conservation Board and the Office of the Attorney General.

There is a need for improved liaison in enforcement between the ERCB, Fish and Wildlife Division of Forestry, Lands, and Wildlife and Alberta Environment. **It is further recommended that consideration be given to the better utilization of enforcement expertise that currently exists in the field through the development of an Accord with the Fish and Wildlife Division outlining the role their enforcement personnel could play in supporting investigation and enforcement actions under the *Clean Water Act*.**

There is also a need for close liaison between the Pollution Control Division and the Attorney General's office to ensure that all investigations are conducted thoroughly and in a manner which will ensure their usefulness in legal proceedings.

7. Publish an Annual Report

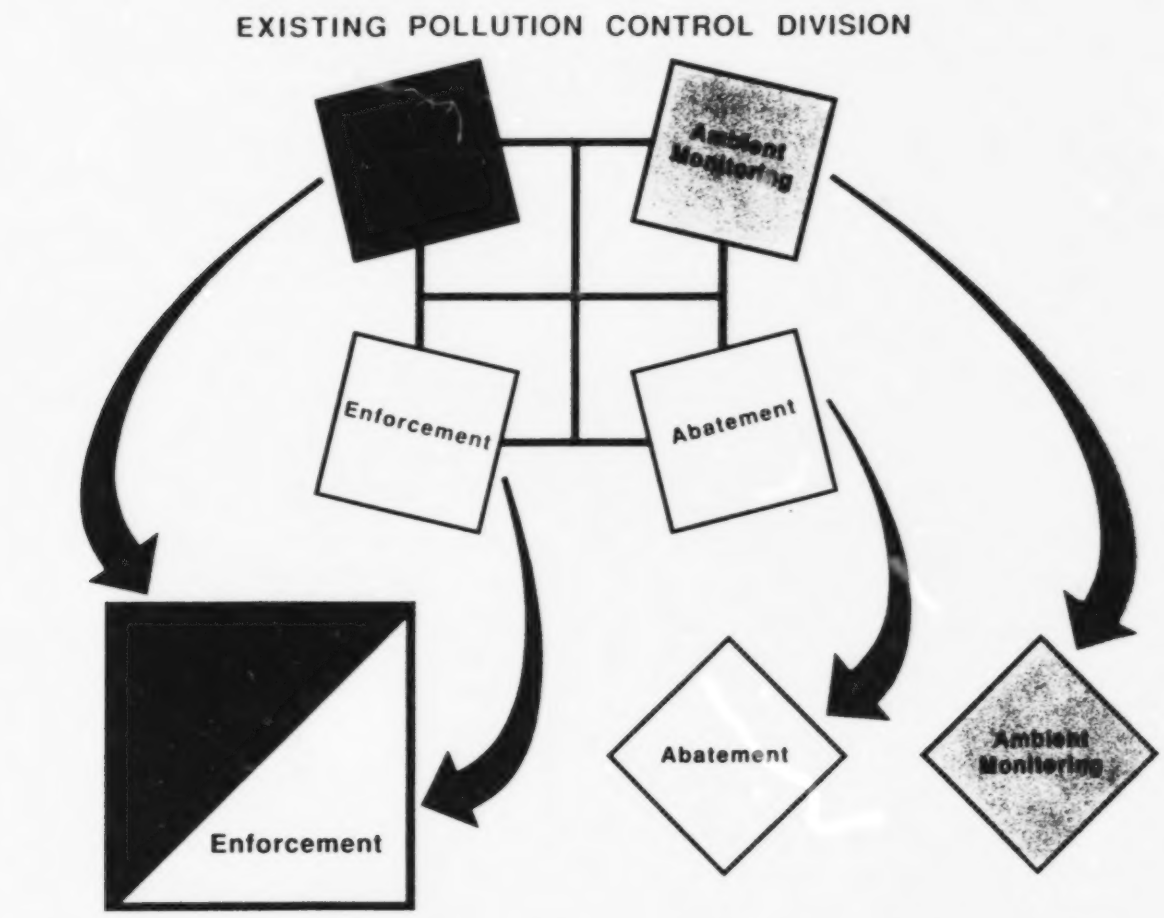
The Review Panel recommends that an annual report be published which outlines all environmental enforcement actions that have been initiated, the status of these actions, the success of the actions and a summary of the record of compliance with orders.

8. Conduct an Evaluation

Upon the implementation of these recommendations, it is recommended that consideration be given to conducting an independent evaluation of compliance with environmental law in Alberta in the context of the Canadian scene. This will assist in determining the effectiveness of the restructured Pollution Control Division.

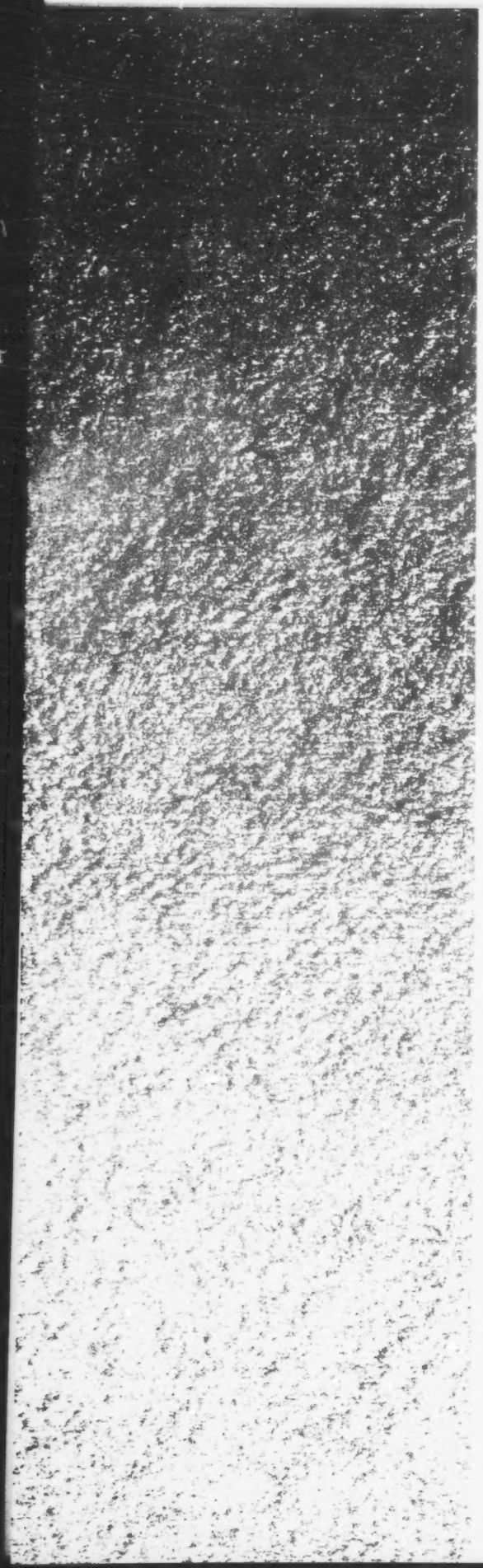
Chart D

Recommended Changes to Pollution Control Division



The Review Panel on Environmental Law Enforcement in Alberta recommends that responsibilities of the Pollution Control Division be refocused to reflect Alberta Environment's increased emphasis on enforcement.

Conclusion



Conclusion

In conclusion, the Review Panel believes the record demonstrates that the consultative approach of Alberta Environment has generally served the public in a responsible and effective manner in preventing pollution. Major advances have been made in steadily reducing pollution emissions in Alberta as new pollution abatement technology has been developed and installed. We support the focus on pollution prevention and recognize the benefits of the consultative approach. An increased adversarial stance could have an effect on good operators if it leads to increased secrecy, confrontation and unnecessary litigation. Nonetheless, the Panel has concluded that offenders should be dealt with in a consistent, firm and prompt manner to achieve the ultimate objective of protecting public health and the environment.

It is with these considerations in mind that the Review Panel has made its recommendations on how to strengthen the existing enforcement system without diminishing the advantages associated with the consultative approach. The recommendations in this Action Plan outline a number of steps that should be taken to achieve this goal. They will require substantial changes both in the Department's enforcement approach and organization.

A general theme running throughout this Action Plan is the need to increase public awareness and involvement in the enforcement system. This can be achieved through increased opportunity for public input in standard setting, public comment on proposed policies and appeal provisions in the licensing system. The proposed annual *State of the Environment* report will also assist in informing the public.

A second major theme is the need to remove some of the *ad hoc* features of the existing enforcement system and the large amount of discretion in determining the appropriate enforcement response. The proposed Enforcement Policy will go a long way to achieving this goal by clearly outlining the appropriate response options to be taken in certain situations. It will clearly define situations when administrative actions are appropriate and those where prosecution should be used.

The proposed enforcement model will also reallocate some of the existing discretion associated with conducting technical discussions at the enforcement stage to the licensing stage. Technical discussions will still take place to ensure realistic license limits are set. However, since the response options to violations of these limits will also be determined at this stage there will be no need for further technical discussions at the enforcement stage, except to determine conditions of a control order.

Hopefully this will lead to the creation of a uniform, predictable and fair enforcement system which is necessary to reestablish Alberta Environment's credibility with both the public and industry.

The enforcement system will continue to rely on industrial self monitoring, enhanced quality assurance programs and accurate reporting. Violation of these requirements will be treated seriously.

Implementation of the above recommendations will require substantial reorganization of Alberta Environment to reflect a clear separation between abatement and enforcement activities. The existing Pollution Control Division should be restructured to focus on enforcement responsibilities including conducting investigations and quality assurance programs, issuing orders and recommending prosecutions. The mandate of the Standards and Approvals Division should focus on preventative aspects of pollution control. This includes source standard setting, licensing, and reviewing ambient monitoring data.

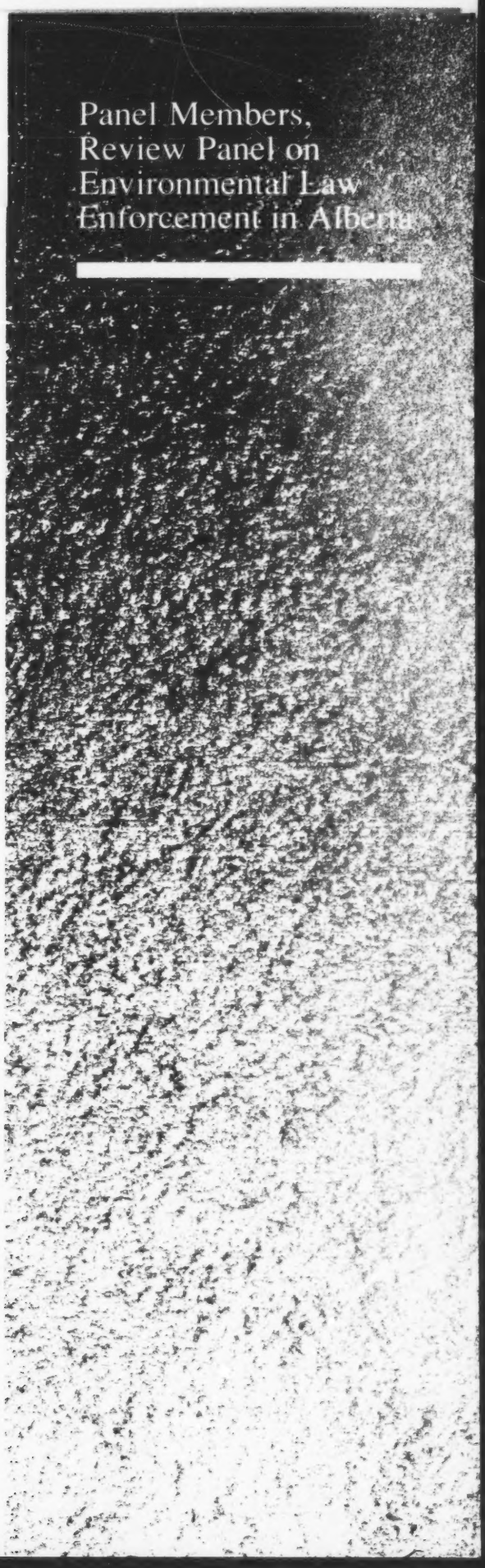
These recommendations will ensure the benefits of the administrative approach to solving environmental problems are maintained, while at the same time removing some of the discretion and uncertainty in the present enforcement approach. This will also ensure that good corporate citizens are not hampered in their efforts to work

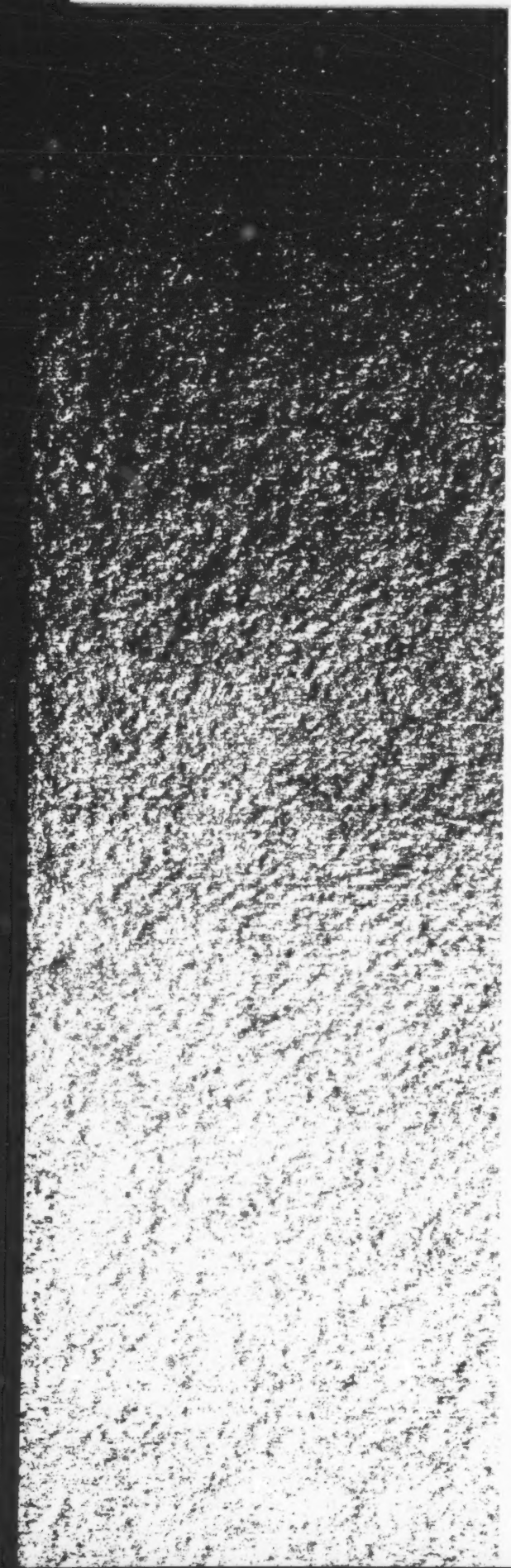
with the Department to solve pollution problems. However, it also ensures that prosecution is a readily available tool for specific offenses.

The effectiveness of the Department's enforcement staff will be improved by ensuring that the same individuals do not have to balance both abatement and enforcement responsibilities.

Recommendations contained in this Action Plan can be accomplished with a reallocation, rather than an increase in Departmental resources. There will also be a need for limited number of legislative amendments, a summary of which is outlined in Appendix III.

It is the expectation of the Review Panel that an enhanced regulatory framework will emerge in Alberta, if the above recommendations are adopted as a comprehensive package. This framework would build upon the acknowledged success of the existing system of negotiated compliance and preventative action while at the same time recognizing the important role of prosecution.


Panel Members,
Review Panel on
Environmental Law
Enforcement in Alberta



Appendix 1

Panel Members, Review Panel on Environmental Law Enforcement in Alberta

Chairman

Ken Smith
Assistant Deputy Minister
Environmental Protection
Services
Alberta Environment

Members

Al Hyndman
General Manager
Development Department
Syncrude

Neil McCrank
Assistant Deputy Minister
Criminal Justice Division
Alberta Attorney General

Denny Thomas
Barrister and Solicitor
Milner and Steer

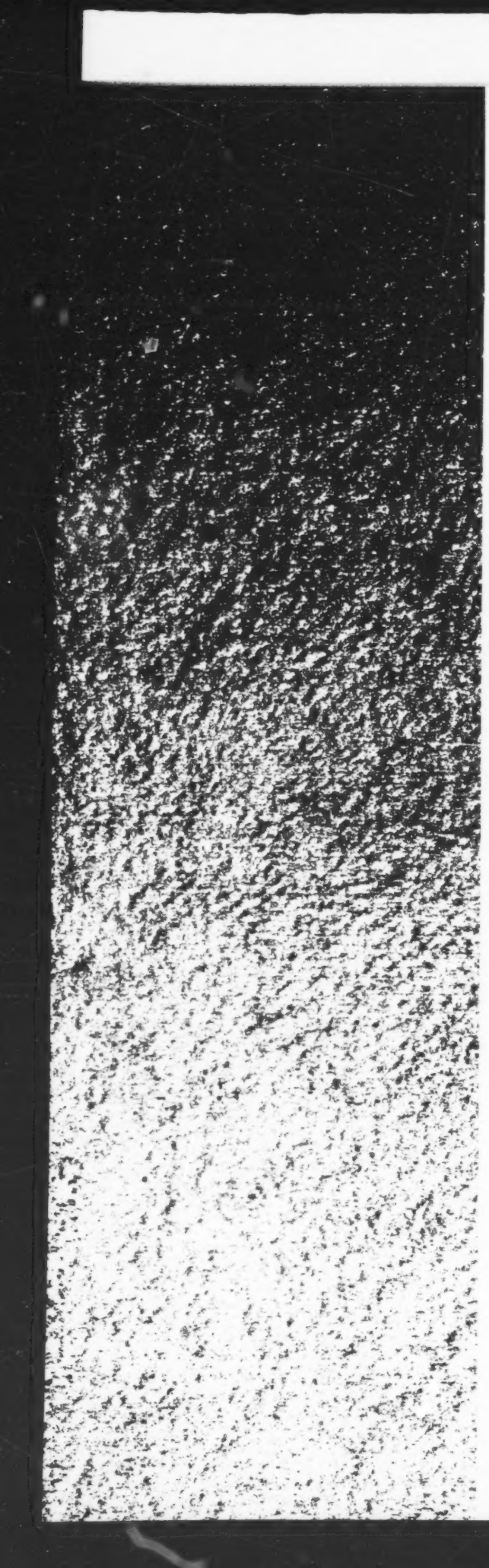
Donna Tingley
Executive Director
Environmental Law Centre

Ron Wallace
President
Dominion Ecological
Consulting Ltd.

Panel Secretary

Jillian Flett
Environmental Consultant

Submissions to the Review Panel on Environmental Law Enforcement in Alberta



Appendix II

Submissions to the Review Panel on Environmental Law Enforcement in Alberta

1.
Alberta Public Safety Services

Mark Egener
Managing Director

2.
Alberta Attorney General

Leo Wenden
Crown Prosecutor

3.
British Columbia Ministry of Environment

Ralph Aldrich
Chief Conservation Officer

4.
Canadian Chemical Producers Association

Walter Lindley
Union Carbide

Ken Vanderwark
Shell Canada

Romeo Piquette
Manager
Process Engineering Safety Health and Environment Labs and Special Projects
Celanese

5.
Canadian Forest Products

Don Davis
Assistant Division Manager and Sawmill Superintendent

6.
Canadian Petroleum Association

Brian Urich
Amoco Canada

Gary Webster
Dome Petroleum

Roger Horne
Gulf Canada Resources

7.
Champion Forest Products

Bill Gunning
Assistant Technical Superintendent

8.
City of Edmonton

Francis Hugo
Water and Sanitation Department

9.
Coal Association of Canada

Richard T. Marshall
President

10.
Alberta Community and Occupational Health

Herb Buchwald
Managing Director
Occupational Health and Safety Division

William Rozel
Executive Director
Work Site Services
Occupational Health and Safety Division

11.
Electric Utility Planning Council

G. Hanslip
Chairman
Steering Committee

12.
Energy Resources Conservation Board

Gerry DeSorcy
Chairman

Ed Brushett
Manager
Environment Protection Department

Mike Bruni
Solicitor

Jim Dilay
Manager
Gas Department

13.
Environment Canada

Meena Weese
Chief
Enforcement and Compliance Branch

Cam Edwards
Head
Enforcement and Compliance Branch

Margaret Ault-Brackel
Manager
Environmental Quality

14.
Environment Council of Alberta

Brian Free
Research Officer

John Lilley
Research Officer

Pollution Study Group
Public Advisory Committee of Environment Council of Alberta

15.
Environmental Resource Centre

Marilyn Kansky
Barrister and Solicitor

Brad Wylynko
Environmental Resource Centre

16.
David Estrin
Barrister and Solicitor

17.
Forestry Lands and Wildlife

Dennis Surrendi
Assistant Deputy Minister
Fish and Wildlife Division

Ernie Psikla
Executive Director
Field Services
Fish and Wildlife Division

Jim Nichols
Section Head
Standards Operations
Fish and Wildlife Division

18.
Fort Saskatchewan Regional Industrial Association

Rob Routs
Shell, Scotford Refinery

Bob Lutz
Dow Canada

Reg Tollover
Sherrit Gordon Mines

19.
University of Alberta

Steve Hrudey
Faculty of Civil Engineering

20.
Independent Petroleum Association of Canada

Gary Webster
Dome Petroleum

21.
Martha Kostuch

22.
Canadian Institute of Resource Law

Al Lucas

23.
Ontario Ministry of Environment

Rod McLeod
Deputy Minister

Bill Balfour
Environmental Approvals and Land Use Planning Branch

24.
Proctor and Gamble

Steve Howes
Environmental Manager

Elin Eysenbach
Manager
Environmental Protection

Floyd Byrd
Manager
Environmental Regulatory Affairs

Strathcona Industrial Association

Bob Gillespie
Petro Canada

Arnold Lamb
Stanley and Associates

Eric Nicholson
Strathcona Industrial Association

Douglas H. Bowerman
Alcan Smelters and Chemicals Ltd.

Ken Lodge
C.I.L.

Al W. Pivarnyik
Esso Petroleum

David Medcalf
Fiberglas Canada Inc.

Wayne Omoth
Interprovincial Pipeline Limited

Edith Parkinson
Petro Canada Products

Robert A. Wood
Stelco Inc.

26.
Shell Canada

Tom Wood
Senior Engineer
Health Safety and Environment

Peter Dickey
Manager
Safety and Environmental Affairs
Health Safety and Environment

27.
Suncor Inc.

Ryan Moore
Executive Vice-President

Don Klym
Environmental Engineer
Technical Resources

28.
University of Calgary

Dixon Thompson
Faculty of Environmental Design

29.
Western Canada Fertilizer Association

Bill Pick
Esso Chemical Canada

30.
Alberta Environment

Jerry Lack
Director
Standards and Approvals Division

Bob Briggs
Director
Pollution Control Division

John King
Director
Land Reclamation Division

Allen Strome
Director
Water Resources Administration Division

Dave Spink
Municipal Engineering Branch
Standards and Approvals Division

Serge Dobko
Air Quality Branch
Standards and Approvals Division

Doug Tupper
Regional Services Branch
Water Resources Administration Division

Stan Tracy
Manager
Land Conservation and Reclamation Council

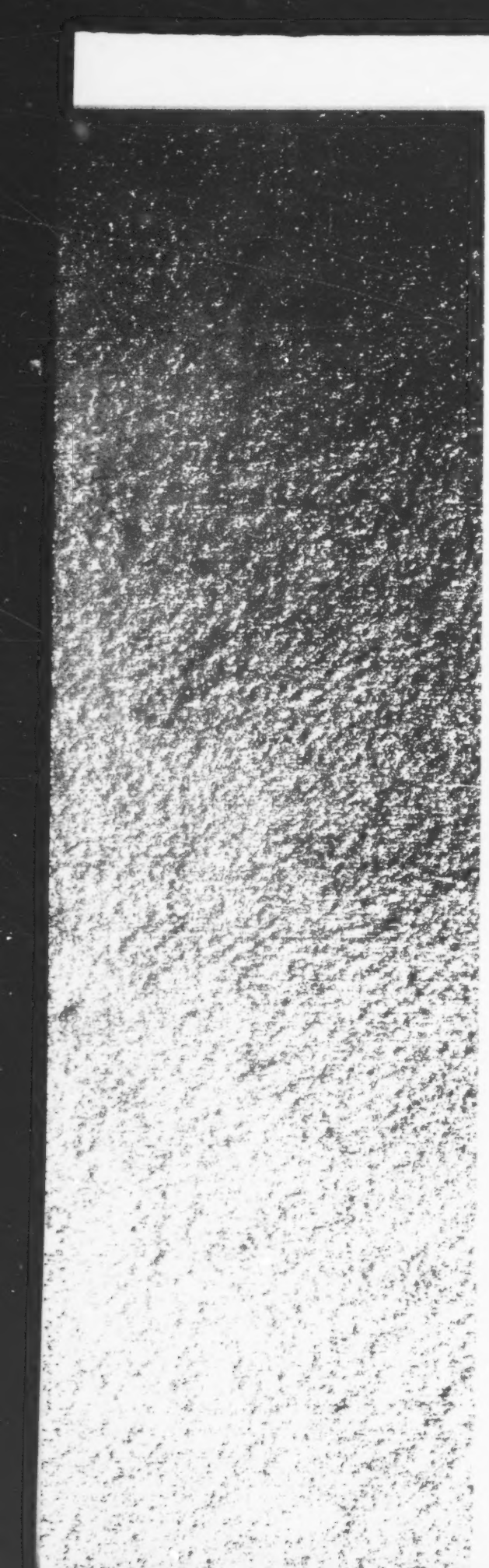
Gurden Peck
Air Quality Branch
Pollution Control Division

Al Schulz
Air Quality Branch
Pollution Control Division

Akio Masuda
Water Quality Control Branch
Pollution Control Division

Frank Witthoeft
Air Quality Branch
Standards and Approvals Division

Proposed Legislative Amendments to Strengthen Enforcement



Appendix III

Proposed Legislative Amendments to Strengthen Enforcement

Clean Air Act and *Clean Water Act* Amendments

- include a general offense provision in the *Clean Air Act*
- repeal section 17(9) of the *Clean Water Act*
- amend control order provisions to include reference to contaminants that adversely affect the *environment*

  i.e. *Clean Air Act*
  s.13(1)(a)(v)
  Clean Water Act
  s.14(1)(a)(iv)

- amend stop order provisions to include those situations that pose an immediate danger to the environment

  i.e. *Clean Air Act*
  s.14(1)(c)
  Clean Water Act
  s.15(1)(c)

- transfer the power to issue cease construction orders to the Director of Pollution Control

  i.e. *Clean Air Act*
  s.3(7)
  Clean Water Act
  s.3(7)

- make the following absolute liability offenses:

  Clean Air Act
  s.3(12)(a)
  s.4(8)(a)
  s.13(9)
  s.14(4)
  s.15.3

  Clean Water Act
  s.3(12)(a)
  s.4(8)(a)
  s.14(9)
  s.15(4)
  s.18(2)
  s.10 (General) Regulations

- include provisions requiring the public notice of license application and issuance
- include provisions requiring publication of a summary of license terms and allowing for public review of license applications and licenses upon request
- include provision for an arbitration process to determine claims of confidentiality for information in license applications
- include provision allowing the Minister or licensee to renegotiate terms of license at any time if it is in the public interest to do so
- include provisions for a license appeal process available to all parties having an interest in the license
- establish an Environmental Statutes Appeal Board consisting of representatives from the government, industry and the public
- include provisions allowing appeals from the Environmental Statutes Appeal Board to the courts on questions of law and jurisdiction only
- include provisions allowing for interim licenses- to-operate during commissioning periods
- amend legislation to allow *suspend* orders which can be issued against unregulated operations releasing air contaminants that are likely to be harmful to public health or the environment
- state that evidence provided pursuant to self reporting requirements is admissible in legal proceedings
- state that monitoring data is deemed to be accurate and admissible as proof of a contravention of emission limits
- allow for court orders in addition to fines
- review and amend the fine structure
- designate each day an offense occurs as a separate offense

- bind Crown corporations and Crown agencies to all provisions of the Act
- state that directors, officers and employees of a corporation are personally liable for those violations in which they have a clear or direct involvement

Amendments to Regulations under the *Clean Air Act* and *Clean Water Act*

- repeal Part 1 of the Clean Air (Maximum Levels) Regulations
- consider making the following absolute liability offenses:

  s. 13 Clean Air (General) Regulations

  s. 10 Clean Water (General) Regulations
- amend the following regulations to require that the following be submitted with all applications for licenses-to-operate:

  1. a declaration regarding start up / shut down sequence and timing,

  2. a worst case assessment and response plan, and

  3. an emergency risk assessment and response plan.

  i.e. Clean Air Regulations s. 8(2)(b)

  Clean Water (Industrial Plants) Regulations s. 5(3)

  Clean Water (Municipal Plants) Regulations s. 8(2)
- repeal provisions which have the effect of waiving emission limits in regulations or licenses

  i.e. Clean Air (Maximum Levels) Regulations s. 10(2)

Summary Convictions Act Amendments

- amend Violation Ticket Regulations to allow tickets to be issued for additional offenses including noise, odour and dust contraventions
- amend Violation Ticket Regulations to increase the amount of the fines

Hazardous Chemical Act Amendments

- consider amending the following to be absolute liability offenses:

1. failure to take emergency measures in the event of a spill of hazardous chemicals s.7.1(2)
2. failure to use a manifest s.7.3(2)

- repeal provisions allowing for appeal of chemical control orders s.7 and 5(4)(b)

Agricultural Chemicals Act Amendments

- repeal provisions allowing for appeals of chemical control orders s.21(c)

Department of Environment Act Amendments

- repeal Stop Order Appeal Regulations